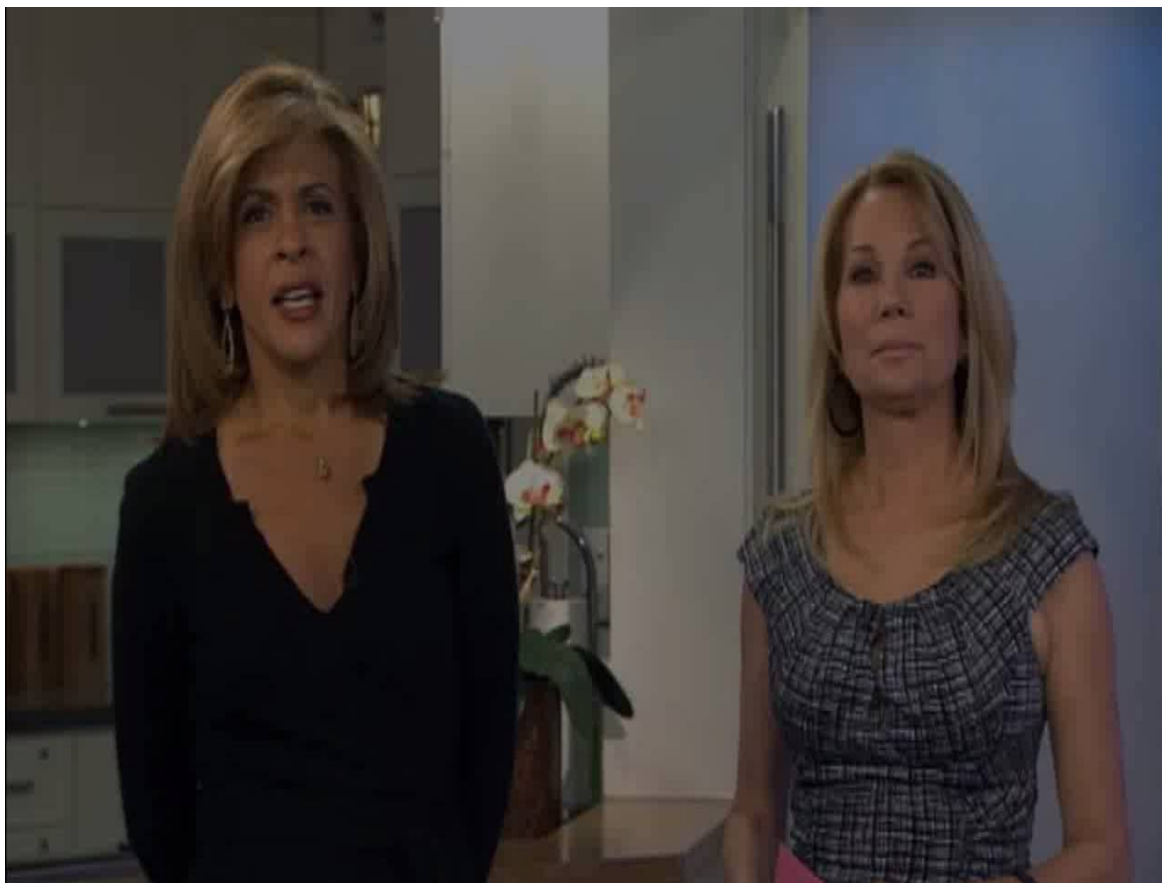


# Digital Social Media Promotions Law Update

Andrew Lustigman (alustigman@olshanlaw.com)  
Adam Solomon (asolomon@olshanlaw.com)



## Section 5 of The FTC Act

- “[U]nfair or deceptive acts or practices in or affecting commerce are declared unlawful”  
(15 U.S.C. Sec. 45(a)(1))
- Is the claim likely to mislead a reasonable consumer?
- Viewed from the consumer’s perspective
- Generally reasonable consumer



## Section 5 of The FTC Act

- What is the reasonable take away (net impression)?
- Was the claim material to the consumer's decision to buy or use the product or service?
- Is it true?
- Is it substantiated?
- Are there unfair business practices?



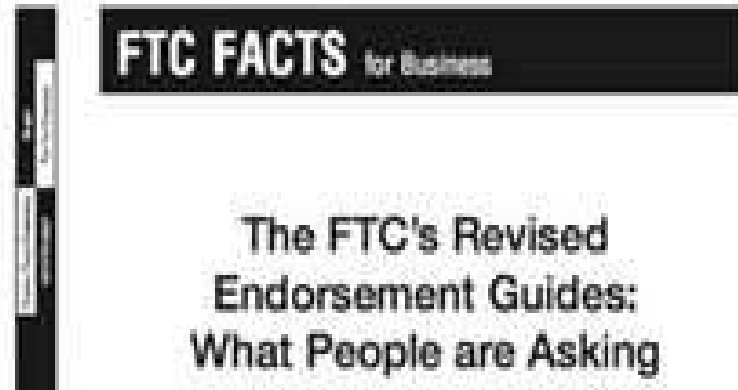


## Self-Regulatory

### ASRC – Advertising Self Regulatory Council

- NAD: National Advertising Division
- ERSP: Electronic Self-Regulation Program
- CARU: Children’s Advertising Review Unit
- NARB: National Advertising Review Board
- 95%+ Compliance Rate

# FTC Endorsement and Testimonial Guides



- Guides are NOT law but rather FTC's interpretation of its false advertising laws
- "Aid to complying with FTC Act"
- FTC has the burden to prove that the advertising is actually false and deceptive
- But, they reflect FTC's intention, notice to the industry, and a position adopted by NAD

# “State of Sponsored Social” Report Izea.com (December 2013)

- The practice of providing compensation to a social media influencer or publisher in exchange for mention, promotion, or review through that influencer’s social media channels
- Compiled from over 10,000 brand marketers, social media consultants, and key social influencers’ input, the report demonstrates the increased importance that marketers put on pursuing social sponsorships, as influencers become increasingly receptive to such sponsorships

Awareness of the Guidelines				
	“no understanding”	“have heard of”	“have read”	“read and understand”
Influencers	37.9%	25%	7.6%	29.5%
Advertisers	26.7%	37.9%	10.6%	25.5%

## Threshold Question: Endorsement?



What is an endorsement?

- Any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or organization name/seal) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser
- 16 CFR §255.0(b)



## FTC “Endorser” Factors

Layne@mamaQBlogsIt “Trips to the salon can be time consuming and really expensive! I love this great option from eSalon! You can save...<http://fb.me/2FigYaWPI>  
ESALON.COM, LLC

- Whether the speaker is compensated by the advertiser or its agent
- Whether the product or service in question was provided for free by the advertiser
- The terms of any agreement
- The length of the relationship
- The previous receipt of products or services from the same or similar advertisers, or the likelihood of future receipt of such products or services
- The value of the items or services received

## Key Points About Endorsements

- Must reflect honest opinions/experience of endorser
- Bona fide user
- Cannot be an express/implied representation that would be deceptive if made by advertiser
- Material connection must be recognized



## In Matter of ADT, LLC

- FTC charged the home security company ADT with misrepresenting that its paid endorsements from safety and technology experts were independent reviews
- ADT paid three spokespersons, including a child safety expert, a home security expert, and a technology expert, more than \$300,000 to promote the ADT Pulse, with one spokesperson receiving more than \$200,000
- In exchange, the spokespersons appeared on more than 40 different television and radio programs nationwide and posted blogs and other material online
- The paid ADT endorsers were introduced by program hosts as experts in child safety, home security, or technology, usually with no mention of any connection to ADT

## ADT Order

- The order:
  - Prohibits ADT from misrepresenting that any discussion or demonstration of a security or monitoring product or service is an independent review provided by an impartial expert
  - Requires ADT to clearly and prominently disclose, in connection with the advertising of a home security or monitoring product or service, a material connection, if one exists, between an endorser and the company
  - Requires the company to promptly remove reviews and endorsements that have been misrepresented as independently provided by an impartial expert or that fail to disclose a material connection between ADT and an endorser

# Why Should You Care About Claims Being Made In Social Media ?



[@Sn00ki NiCOLE POLiZZi](#)  
 Glad to hear reports that say I look good =) but it's not because of HCG! Thanks [@Zantrex!](#)  
[26 Sep via Twitter for iPhone](#)

- Liability for express and implied claims made by advertiser
- Liability for endorser’s claims made when posted by advertiser
- Potential liability for endorser’s claims made when posted in other media
- Liability for advertiser’s failure to disclose material connection
- Potential liability for endorser’s failure to disclose material connection

## eSalon

Layne@mamaQBlogsIt “Trips to the salon can be time consuming and really expensive! I love this great option from eSalon! You can save...<http://fb.me/2FigYaWPI>  
ESALON.COM, LLC



Savvy Sassy Moms@savvysassymoms eSalon The New Revolution In At-Home Hair Coloring  
<http://bit.ly/14e87cU> <--shhh don't tell your hairdresser

- Posting on its Facebook and Pinterest accounts photos of celebrities under “Hair Colors We Love,” who had not endorsed its products or licensed the use of their likeness
- No disclosure of sponsorship of [www.haircolorforwomen.com](http://www.haircolorforwomen.com) and [www.totalbeauty.com](http://www.totalbeauty.com) blogs
- Blog posts recommend eSalon products and appear to be unbiased and unconnected to eSalon

## eSalon (NAD #5645)

### NAD Recommended:

- Advise reviewers of material connection disclosure obligations
- Require advertiser to disclose incentives provided to reviewers
- Advertiser disclose, clearly and conspicuously, at the top of [www.haircolorforwomen.com](http://www.haircolorforwomen.com) and on each page or post, that eSalon maintains the blog
- Advise reviewers of their disclosure obligations when it provides incentives for posting online reviews or content about eSalon, and the advertiser disclose any incentives it provides for posts
- Disclose its connection to the blog, [www.haircolorforwomen](http://www.haircolorforwomen.com), when it posts content from the blog on Pinterest or other social media
- Discontinue its use of non-endorser celebrity photos on its website or in social media, because such use implies an endorsement of eSalon by the depicted celebrity

# Traditional Advertising Law Requirements Apply In Social Media



- Tweet on Individual Page:  
*“Becky and husband lost 14 lbs in 2 days!”*  
*“Tina Thompson lost 7.2 lbs in 5 days!”*
- ERSP: Claims attested to on individual Twitter pages may be considered advertising messages for the purpose of communicating expectations about the product and must be independently supported by the advertiser
- *Liquid HCG Diet, LLC (ERSP #246)*

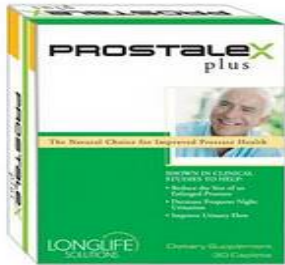


## Bloggers Are Treated Differently



- FTC believes bloggers to be subject to different disclosure requirements than reviewers in traditional media
- Reviews published in traditional media (*i.e.*, where a newspaper, magazine, or television or radio station with independent editorial responsibility assigns an employee to review various products or services as part of his or her official duties, and then publishes those reviews) not to be sponsored advertising messages
- Traditional media reviews are not “endorsements” within the meaning of the Guides even with free product

# Traditional Advertising Law Requirements Apply In Social Media



## NAD challenged claims on “Prostate Health Blog”

- Appeared to be an actual blog
- Linked to the advertiser’s website
- Posts on the blog were posted by Prostate Plus
- NAD: Blog itself constitutes advertising
- *Herbal Groups, Inc.* (NAD #5005)

**Prostate Health Blog**  
A blog about resources on prostate therapy, mens' health industry news, and much more.

WEDNESDAY, JULY 30, 2008

**Summer special!**

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.](#)

posted by Prostalex Plus @ 10:00 AM 0 comments

MONDAY, JUNE 2, 2008

**Summer is right around the corner!**

Summer is right around the corner and that means sun and fun for most of the US. We'll be lighting the barbecue soon for the 4th of July. Chances are you'll be around a large crowd of people and what better time to promote prostate health than at a backyard party! If you're neighbors are anything like mine they'll tell you "everything" that is going on with the people living around you so why not share your new found love for prostate health with them. A simple question like, "Have you had a prostate exam lately?" can break the ice and provide a moment to laugh before starting a conversation. It's a fact that some men are afraid to go to the doctor for routine check ups so encourage your male friends and family members to stay healthy now before minor issues turn into major problems.

Labels: [barbecue](#), [exam](#), [friends](#), [prostate health](#)

posted by Prostalex Plus @ 2:20 PM 0 comments

MONDAY, APRIL 21, 2008

**New Years Resolutions**

Many of us have forgotten our New Years Resolutions while some of us are still maintaining our lofty goals! Personally I am working on maintaining and improving my health overall for 2008 and beyond. Of course prostate health is vitally important to me and so is keeping a high level of cardio fitness through bicycle racing. You don't need to take things to extremes like I do but you can do a few things daily to

**About Me**

**Name:** Prostalex Plus  
**Location:** Chatsworth, California, United States

Prostalex Plus is dedicated to providing all-natural solutions for mens' health. Men across the country have used Prostalex Plus to improve prostate health.

[View my complete profile](#)

**Links**

- [Order Prostalex Plus](#)
- [Longlife Solutions](#)
- [Herbal Groups](#)

**Previous Posts**

- [Summer special!](#)
- [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](#)
- [Prostatitis](#)

**Archives**

- [January 2008](#)
- [February 2008](#)
- [March 2008](#)

**ONE  
of the  
BEST**

**One of the  
best apps  
just got  
better**

**Amazing  
new  
game!**

**[App developer]  
hits another  
home run with  
[app being  
reviewed].**

***GREAT,  
family-friendly  
board game app***

**[App  
developer]  
does it  
again!**

*Reverb Communications, Inc.*, 150 F.T.C. 782 (2010) (consent order)

## Agencies Are Potentially Liable

- FTC filed suit against Reverb, a public relations agency and sole owner (but not Reverb's client) for deceptive advertising based on Guides
- Reverb employees posed as consumers posting game reviews of Reverb's client products at the Apple iTunes Store
- Reviews failed to disclose that the reviewers were actually employees hired to promote the games and that Reverb often received a percentage of the sales
- **"The online post by a person connected to the seller, or someone who receives cash or in-kind payment to review a product or service, should disclose the material connection the reviewer shares with the seller of the product or service. This applies to employees of both the seller and the seller's advertising agency."**
- Required to remove improper posts and barred from future deception activities
- *In the Matter of Reverb Communications, Inc. (August 2010)*




**The New York Times**

Business Day  
**Technology**

## Give Yourself 5 Stars? Online, It Might Cost You

By DAVID STREITFELD

Published: September 22, 2013 |  316 Comments



### **A.G. Schneiderman Announces Agreement With 19 Companies To Stop Writing Fake Online Reviews And Pay More Than \$350,000 In Fines**

*“Operation Clean Turf” Concludes Year-Long Undercover Investigation Into Reputation Management Industry, Astroturfing And False Endorsements*

*Schneiderman: Astroturfing Is 21st Century’s False Advertising*

## Operation Clean Turf

- NY AG enters agreements with 19 companies to stop writing fake online reviews and pay more than \$350,000 in fines.

*Examples:*

- **ASEO.** Company based in NYC, posted more than 1,500 fake reviews of clients on consumer-review websites such as Yelp.com and Google Places and attempted to defeat consumer-review website filters by changing the IP address of the computer from which it posted the reviews every week, making the reviews look like they came from different users.
- **US Coachways, Inc.** The management of this leading national bus charter company based in Staten Island, NY orchestrated an astroturfing campaign, writing bogus reviews themselves, soliciting freelance writers to write bogus reviews, and urging employees to pose as customers and write positive reviews. They also offered \$50 gift certificates to customers to write positive reviews without requiring that the customers disclose the gift in the review.

## Affiliate Claims

- Legacy Learning Systems Inc. charged with deceptively advertising the “Learn & Master Guitar” program
- Used online affiliate marketers who posed as ordinary consumers to promote product
- Failed to clearly disclose they were paid substantial commissions for every sale they generated
- \$250,000 administrative settlement; monitoring of affiliates
- *In re Legacy Learning Systems, Inc.* (FTC File No. 102 3055) (March 2011)





# What About Facebook Postings?



- Advertiser website?
- Selection/editing posts?
- What's the relationship between the speaker and the advertiser?
- Used in advertising?

## FACEBOOK Testimonials

**Todd Bumgardner**  
James Smith and DeFranco's Gym have put together the most comprehensive resource on POWER training that I have ever seen! You should have bought it 5 minutes ago!

**Dylan Poesch**  
I got the DVD today! It's great just finished watching! I am jacked for my next workout! I'm going to do the contrast method on Wednesday with barbell squats and jump squats! Lots of great information! Thanks again!

**Christopher James Perilli**  
If you want to be more POWERFUL, then pick up a copy of POWER! by DeFranco's Gym and James Smith today. You won't be sorry but your competition sure will be! To be powerful means to train with bad intention on moving the weight as fast as possible within a percentage of your 1RM. If you train slow you will be slow. If you spar slow you will be beaten slowly when it comes fight time. Get POWER! now!

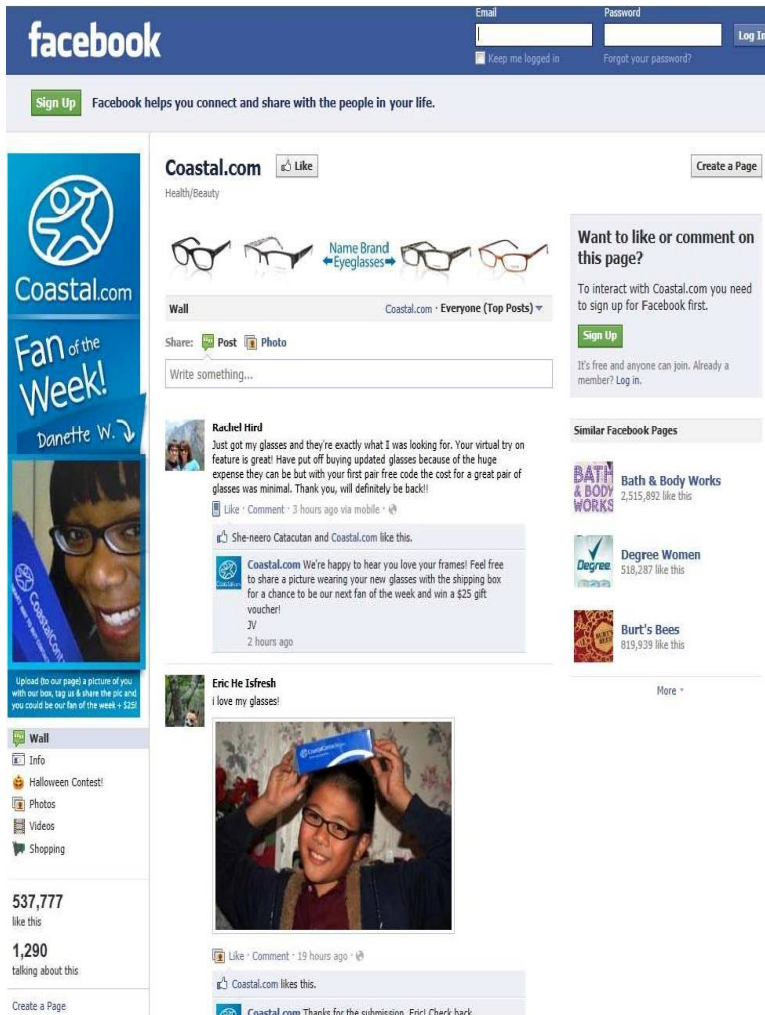
**Ben Bruno**  
Watching the new POWER! DVD from James Smith and DeFranco's Gym. It just came out today and it's freakin awesome! Definitely check this one out!

**Luca Hocevar**  
Got this in the am and crushed through it. Another amazing product by Smitty and Joe DeFranco!

**JP McElwee**  
POWER! is sick!! I watched it last night after a double shift at work. So much info, so many different variations. You guys did an amazing job.



# Is “Like” An Endorsement?



Coastal Contacts “Like-gated” its Facebook page to provide consumers with access to free eyeglass promotion otherwise challenged as being deceptive

*Challenge:* Every time an individual “likes” Coastal on Facebook, constitutes an endorsement

NAD determined marketers can “like-gate” a promotion without triggering endorsement requirements where participants received the benefit of the promotional offer

Facebook is changing “Like-gating” rules

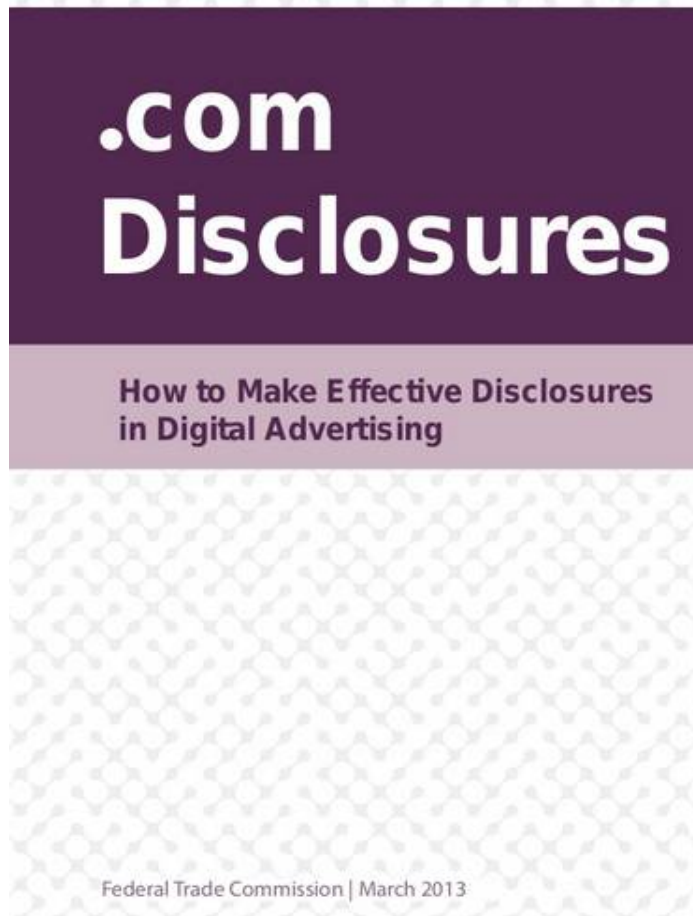
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# Am I Liable for What Others Post on My Social Media Sites?

- It is always a good idea to monitor activity on your social media sites (as well as your own websites) and remove any user-posted content that is obviously offensive or infringing.
- Digital Millennium Copyright Act shields service providers against claims of infringement, but technically, you are not a service provider on social media sites.
- *Doctor's Associates, Inc. (Subway) v. QIP Holder LLC (Quiznos)* – Quiznos motion for summary judgment, alleging immunity under the Communications Decency Act (which provides protection for service providers for content posted on their sites by others) was denied. Court found that because Quiznos actively solicited consumers to make videos, there was a question of fact whether Quiznos was responsible for the content of the videos.

# FTC REVISED ONLINE DISCLOSURE GUIDELINES

## .com Disclosures Guide



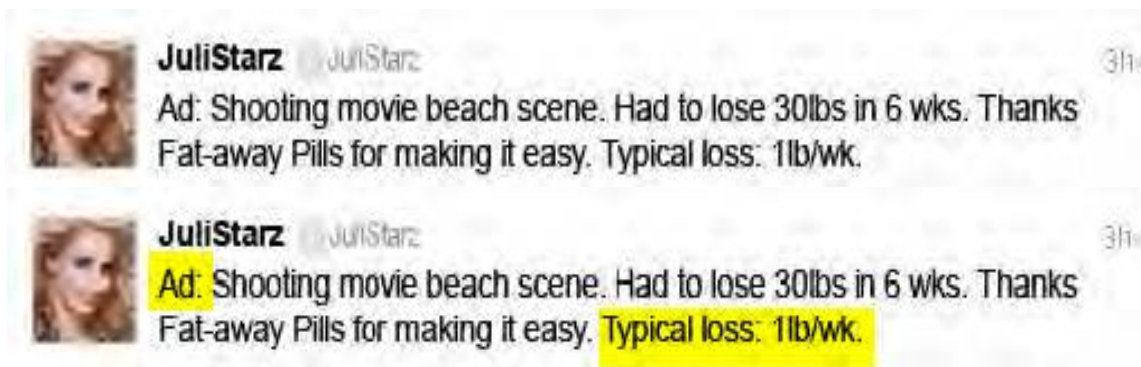
**FTC: ultimate test  
is whether information  
to be disclosed is actually  
conveyed to consumer**

## **Clear and conspicuous**

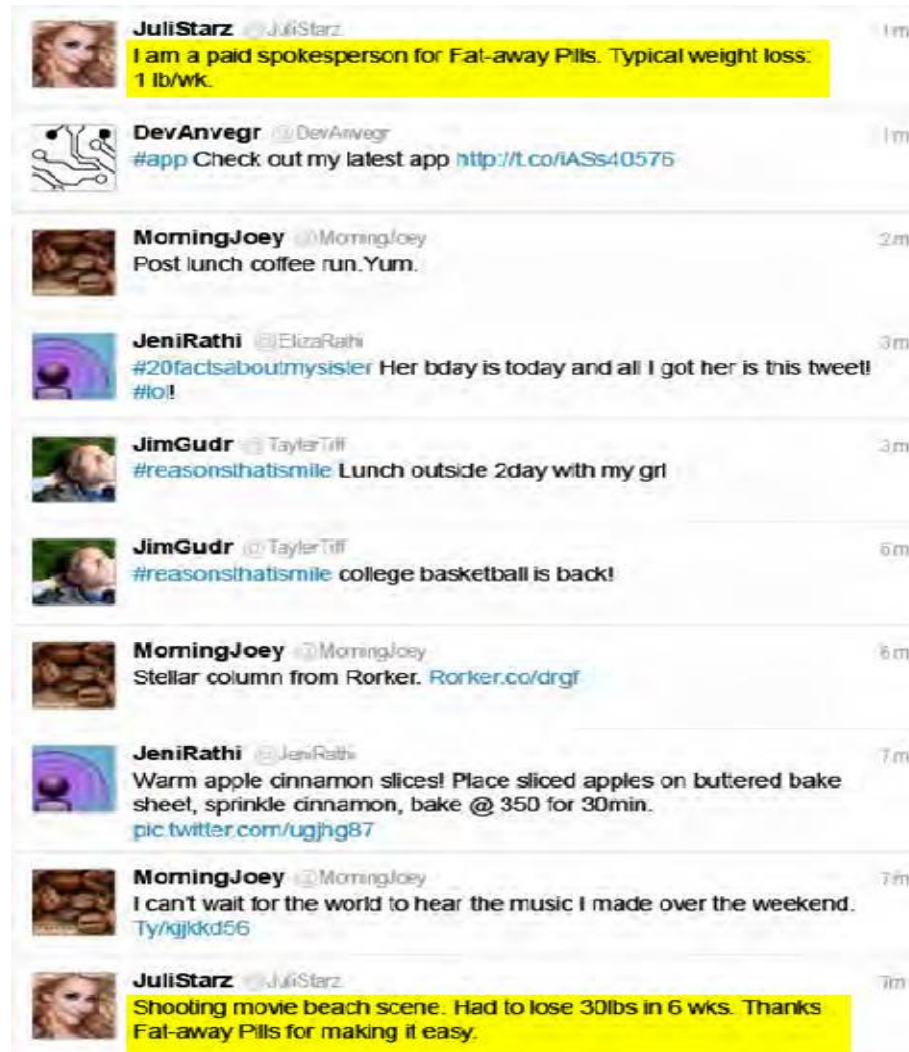
- Proximity and placement
- Prominence
- Understandable language
- Repeat when necessary

## Disclosure Must Be Made Even Where Space Is Limited

- Hypothetical space-constrained message requires two disclosures:
  - That person is a paid endorser; and
  - The amount of weight that consumers who use product can generally expect to lose in depicted circumstances



# Use Disclosures In Each Ad



## Where and How Disclosures Are Provided

- Advertisers using space-constrained ads, such as on some social media platforms, must still provide disclosures necessary to prevent an ad from being deceptive
- Marketers should avoid conveying disclosures through pop-ups, because they are often blocked

## Pay Attention To Indications That Hyperlinked Disclosures Are Not Effective

- Monitor click-through rates, *i.e.*, how often consumers click on a hyperlink
- Evaluate the amount of time visitors spend on a certain page



# Native Advertising



- Native advertising is an online advertising method in which the advertiser attempts to gain attention by providing content in the context of the user's experience
- Native ad formats match both the **form** and the **function** of the user experience in which it is placed
- Worried that consumers might be confused by native ads, the FTC conducted the workshop to help figure out if the agency should issue additional guidance to help advertisers and publishers steer clear of enforcement action

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**1 INCREDIBLE MACHINE**  
**Y O G A**

**media roadblock**

Social Media FOLLOW MASHABLE ▾

**Tech Innovators Series** series name

**presented by brand** presented by

Off

This 15-Year-Old's Science Project Will Light Up Your World

How Online Dating Sites Use Data to Find The One

Plated Lets You Be Your Own Gourmet Chef

This Gadget Is a Handheld "Power Plant"

TABLET

Use your ◀ ▶ keys to browse more stories PREV 34 / 71 NEXT

## This Gadget Is a Handheld "Power Plant"

Edit story

3.6k

SHARES

2.4k

790

350

86

0

12

**promob** **blurb w/** **logo**

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The Tech Innovators Series is presented by Lenovo. Lenovo does not just manufacture technology. They make Do machines -- super-powered creation engines designed to help the people who do, do more, do better, do in brand new ways.

BY ELSHA HARTWIG

SEP 24, 2013

If you're frustrated with the poor battery life of your devices, and you're always hauling cords around to charge everything, Nectar could be your solution. Developed by the team at Lilliputian, Nectar will charge any of your USB 2.0 compatible devices on the go -- giving you two weeks to a month of power in one portable, recyclable power pod. In other words, you no longer have to search for wall plug-ins at cafes, or disable apps on your phone to save battery life. With Nectar, you are completely self-reliant.

We spoke with Mouli Ramani of Nectar about the product's exciting future, the technology behind the device and the impact Nectar will have on consumers.

**social widgets**

1,372,712 people like Lenovo.

**Tweets**

Lenovo @lenovo

In 6 hours (7 pm PT) we reveal a #betterway. Join livestream from #IoT@InfoSpaceLA [lnv.gy/1sAgR7Y](#) pic.twitter.com/JSN9bqG

Tweet to @lenovo

**What's Hot**

WATERCOOLER

Emotional Baby's Reaction to Mom Singing Will Have You in Tears

1K SHARES

WATERCOOLER

This Is Why Your Facebook Feed Is Overrun With Giraffes

1K SHARES

RULES OF THE ROAD  
RELATED TO  
CONDUCTING A PROMOTION  
ON SOCIAL MEDIA

# Conducting a Promotion on a Social Media Platform



## The Promotion Must Be Legal

One of the three elements (prize, chance or consideration) must be eliminated in order to avoid conducting a lottery

- Remove the consideration element to conduct a lawful sweepstakes
  - “No Purchase Necessary”
- Remove chance (randomness) element to conduct a skill contest
  - Have entrants submit an essay where all the submissions are judged

The image is a screenshot of a Facebook post from the REI page. The post is titled "REI Photo Contest: Top Brands" and is categorized under "Outdoor gear/Sporting goods". It features a large promotional graphic for the contest. The graphic includes the REI logo, the text "FIND OUT. REI", and the main title "REI TOP BRANDS PHOTO CONTEST". Below the title, it says "Submit a photo of yourself wearing or using your favorite outdoor brand(s). Photo-contest winners will receive an REI gift card so they can get more great gear from their favorite brands." There is a prominent "Enter Contest" button. At the bottom of the graphic, there are links for "Details", "Enter Contest", "View Entries", and "Invite Friends". Below the graphic, there is a "Prize Details" section stating "Winners get an REI Gift Card worth \$500 to spend on their favorite brand(s)". The left sidebar of the Facebook interface shows the REI profile picture and navigation options for "Wall" and "Info".



Sears

If you didn't know we've been giving away \$100 gift cards to 10 winners each week, we're glad you do now. Enter for a chance to win. NO PURCHASE NECESSARY. Rules: <http://shout.it/mNvL>



Like · Comment · Share · 60 1 3 · 19 minutes ago ·

## Facebook Says No More “Like-Gated” Promotions

- New Facebook policy effective November 5, 2014
- “Only incentivize a person to log into your app, like your app’s Page, enter a promotion on your app’s Page, or check-in at a place. Don’t incentivize other actions....you may no longer incentivize people to like your app's Page.”
- "You must not incentivize people to use social plugins or to like a Page. This includes offering rewards, or gating apps or app content based on whether or not a person has liked a Page.”



## Conducting Promotions on Facebook

- If using Facebook to communicate or administer a promotion (sweepstakes or contest), responsible for the lawful operation of that promotion, including:
  - The official rules
  - Offer terms and eligibility requirements (*e.g.* age and residency restrictions)
  - Compliance with applicable rules and regulations governing the promotion and all prizes offered (*e.g.* registration and obtaining necessary regulatory approvals)

## Conducting Promotions on Facebook

- Promotions on Facebook must include:
  - A complete release of Facebook by each entrant or participant
  - Acknowledgment that the promotion is in no way sponsored, endorsed or administered by, or associated with, Facebook
  - Disclosure that the participant is providing information to the Sponsor and not to Facebook

## Conducting Promotions on Facebook

- You may use native Facebook functionality as a method of entry
  - OK: “Post a photo on our page to enter”
  - No longer OK: “Like our page to enter”
- You may not require consumers to post on their own wall as a method of entry
  - Prohibited: “post a photo on your page with #hashtag to enter”
- Promotion may be administered in a platform application (but no longer the only acceptable method)
  - Advantages remain to using an application, including ability to obtain agreement to rules

## Conducting Promotions on Facebook

- You may use Facebook features or functionality, such as the “Like” button, as a voting mechanism for a promotion
  - Voting may be through an application as well

## Conducting Promotions on Facebook

- You may notify winners of your sweepstakes through Facebook, *e.g.*, through Facebook messages
- You may collect e-mail address at the time of entry to contact the winners (only possible via an application-based promotion)

## Conducting Promotions on Facebook

- You must have a privacy policy that tells users what user data you are going to use and how you will use, display, share, or transfer that data and you must include a link to the privacy policy in the application
  - <https://developers.facebook.com/policy/>

## Tagging

- Can we have consumers tag themselves or others in photos they post?
  - If the consumer tags themselves, risk is likely low
  - However, allowing others to be tagged is riskier and creates a potential right of publicity issue



## The 'Tweet' Escape

Presented by the new Scotiabank® Gold American Express® Card.

Tweet your way to a trip for two worth  
**\$10,000**

You could be only 140 characters away from an once-in-a-lifetime journey. Enter the Scotiabank American Express 'Tweet ' Escape contest and you and a guest could WIN a \$10,000 travel experience. Entering to win is easy. No purchase necessary.

### How to enter.

For your chance to win, simply tweet where you would travel to if you won the \$10,000 prize and who you would take with you. Remember to include the hash tag #ScotiaAmex to officially enter. [Rules & Regulations](#)



With \$10K, I'd go to [destination] with @[Twitter friend]. #ScotiaAmex @scotiabank

Before your tweet is posted, you'll be asked to log into your twitter account. [Twitter](#)

Submit



## University of Iowa (Tippie School of Mgmt) Holds a \$37K Twitter Scholarship Contest

- Answer in a tweet, “What makes you an exceptional Tippie MBA candidate and full-time MBA hire? Creativity encouraged!”



## Winning Tweet

- Winning tweet used a classic form of Haiku to explain why he would be an outstanding Tippie MBA student
  - Globally minded (5)
  - Innovative and driven (7)
  - Tippie can sharpen (5)

## Conducting Promotions on Twitter

Twitter has “Guidelines for Contests”

- Do not encourage abuse of Twitter
  - Discourage the creation of multiple accounts
  - Discourage posting the same tweet repeatedly
- Twitter has shut down promotions that caused an excessive amount of activity

## Conducting Promotions on Twitter

- Ask users to include an @reply to you in their update so you can see all the entries
- Encourage the use of topics relevant to the contest
- Don't use Twitter's trademarks, *e.g.*, Twitter and Tweet, other than to refer to Twitter and sending a Tweet
- Before starting any contest or sweepstakes need to ensure that it complies with all applicable laws and regulations



**S&T BANK'S  
CATCH THE BUS CONTEST  
ENTER NOW**



## Conducting Promotions on YouTube

- Gadget allows advertisers to design their own custom web application and/or microsite on their YouTube channel
- Need approval from YouTube to administer a promotion on YouTube using a “gadget”, but not to administer a promotion in which you request users post their video to YouTube and submit a link to their video

## YouTube's Contest Policies and Guidelines

- Brand is solely responsible for contest
- Contest must comply with all applicable federal, state and local laws, rules and regulations in the jurisdiction(s) where the contest is offered
- Contest cannot infringe upon or encourage the infringement of any third party rights or the participation in any unlawful activity
- Contest may only accept entries from users 18 and older
- Cannot ask users to give all rights for, or transfer the ownership of, their entry

## YouTube's Contest Policies and Guidelines

- Contest must be free to enter
- Contest must be a game of skill where the winner is determined by a set of clear judging criteria
- May not utilize channel functions, such as video likes or view counts, to conduct contest
- May only use data collected from entrants for contest administration purposes and cannot re-use the data for marketing purposes (even if the user expressly opted-in to that use)
- Cannot use the YouTube embedded player or YouTube API to run a contest



## YouTube's Contest Policies and Guidelines

- Must have “Official Rules” which:
  - Include links to YouTube Terms of Service and Community Guidelines
  - State all disclosures required by applicable laws
- All prizes must be awarded as outlined in rules
- Rules must clearly state that YouTube is not a sponsor of the contest and ask users to release YouTube from all liability related to the contest
- Must include a legally compliant privacy notice in rules which explains how personal data will be used

## YouTube's Contest Policies and Guidelines

- YouTube has the right to remove a contest for any reason
- Should YouTube remove a contest based on violation of these terms, you release YouTube from any liability
- Must immediately remove any entry and disqualify an entrant suspected of violating the official rules of if the entry violates YouTube Terms of Use

esurance digital  
dinner party contest

Pin to win a trip for 2 to the Food Network  
South Beach Wine & Food Festival!

- \$2,500 for travel expenses
- 4 unforgettable nighttime parties
- 2 full days at the Whole Foods Market  
Grand Tasting Village

**To enter:**

- Complete the sign-up form [here](#)
- Follow Esurance on Pinterest.
- Create a board titled "Esurance Digital Dinner Party" and fill it with your favorite dishes, chefs, restaurants, kitchenware, and food hacks. Your board will be judged based on creativity, originality, and how well it ties in with our theme.

Enter by January 29 for your chance to win. Good luck!

**Food BEWFF**  
PRESENTED BY FOOD52 | WWW.FOOD52.COM

**esurance**  
insurance for the modern world

Only one pin per entry required. Must be 21 or over. No purchase necessary. Void where prohibited. See entry form for official rules.

## FTC Letter to Cole Haan Regarding Pinterest Contest (March 2014)

- Cole Haan sponsored the “Wandering Sole” Pinterest Contest which required contestants to create a pin board that included five show images and were instructed to use #WanderingSole in each pin description
- Cole Haan promised to award a \$1,000 shopping spree to the contestant with the best entry
- FTC concluded that entrants’ pins featuring Cole Haan products were endorsements of Cole Haan products and the fact that pins were incentivized by the opportunity to win a prize would not reasonably be expected by consumers who saw the pins
- Cole Haan did not instruct entrants to label their pins and boards to make it clear that they had pinned Cole Haan products as part of a contest
- FTC stated the #WanderingSole hash tag did not adequately communicate the financial incentive – a material connection – between entrants and Cole Haan
- No enforcement action at this time because new announcement of FTC position

## Pinterest Guidelines

- Do not do any of the following:
  - Suggest that Pinterest sponsors or endorses you or the contest
  - Require people to add Pins from a selection—let them add what they like
  - Make people Pin your contest rules
  - Run a sweepstakes where each Pin, board, like or follow represents an entry
  - Encourage spammy behavior, such as asking participants to comment
  - Ask people to vote with Pins, boards, or likes
  - Overdo it: contests can get old fast
  - Require a minimum number of Pins - - one Pin is plenty
  - Call your contest a “Pin it to win it” contest

## Pinterest Guidelines

- If you use Pinterest as part of a contest or sweepstakes, you are responsible for making sure it complies with all legal requirements
  - This includes writing the official rules, offer terms and eligibility requirements (ex: age and residency restrictions), and complying with marketing regulations (ex.: registration requirements and regulatory approvals)
  - These rules can vary from place to place, so please work with a lawyer or other expert to make sure you're in compliance
- Comply with Pinterest Terms of Service
- Pinterest isn't responsible or liable in any way if you use us as part of your promotion

## Conducting Promotions on Pinterest

- Only pin and re-pin images that the company owns or has a license to use
  - Advertisers shouldn't use Pinterest like consumers
- "Nopin" code: allows websites to block users from pinning their images
  - Website's images aren't fair game just because they don't display a "nopin" code
  - A copyright owner has no obligation to use a "nopin" code, and one cannot assume that the failure to use a "nopin" code is implicit permission
- Licensed images can be tricky – need to negotiate rights in perpetuity for Pinterest





Instagram  
Fast beautiful photo sharing

## Vanguard Photo Contest on Instagram

**WIN A VANGUARD BAG\*  
THE HERALDER 38**

**SECOND PRIZE:  
NIVELO 204SL TRIPOD**



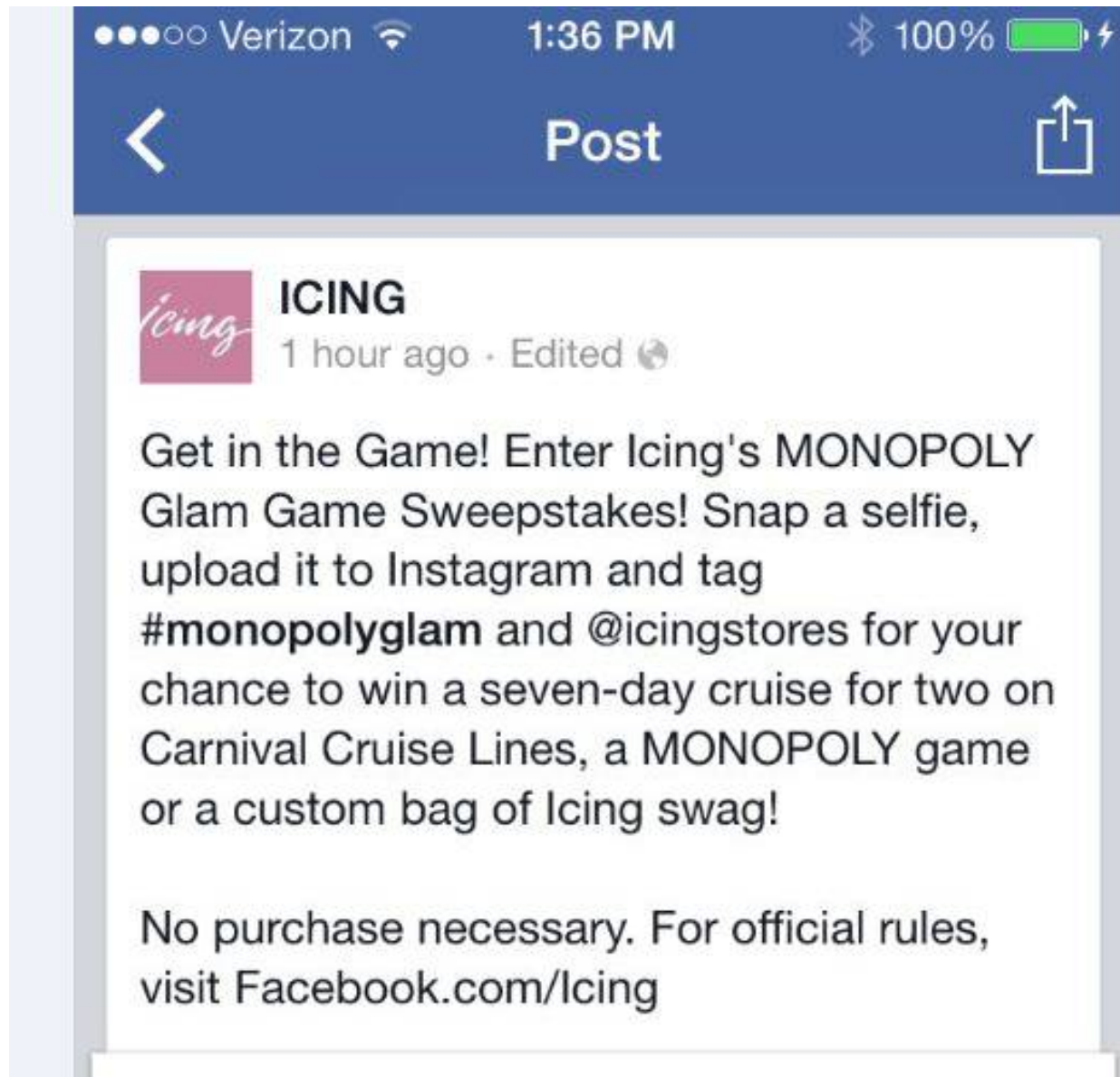
1. Take an original photo about **the Sun!**
2. Tag it with the hashtag **#instaVanguard**
3. Follow our instagram account **@VanguardEurope**
4. Win **The Herald 38 bag** or a **Nivelo 204SL tripod\***

\*See rules



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www.vanguardworld.com





## Instagram Promotion Guidelines

- If you use Instagram to communicate or administer a promotion (ex: a contest or sweepstakes), you are responsible for the lawful operation of that promotion, including:
  - The official rules
  - Offer terms and eligibility requirements (ex: age and residency restrictions)
  - Compliance with applicable rules and regulations governing the promotion and all prizes offered (ex: registration and obtaining necessary regulatory approvals)
- You must not inaccurately tag content or encourage users to inaccurately tag content (ex: don't encourage people to tag themselves in photos if they aren't in the photo)

## Instagram Promotion Guidelines

- Promotions on Instagram must include the following:
  - A complete release of Instagram by each entrant or participant
  - Acknowledgement that the promotion is in no way sponsored, endorsed or administered by, or associated with, Instagram
- Instagram will not assist you in the administration of your promotion and cannot advise you on whether consent is required for use of user content or on how to obtain any necessary consent
- You agree that if you use our service to administer your promotion, you do so at your own risk

**How To**  
Use  
  
**For Your**  
**Online**  
**Giveaway**

sarafhawkins.com

# Google+

## Contests and Promotion Policy

- You may not run contests, sweepstakes, or other such promotions directly on Google+ or in a manner that requires use of Google+ features or functionality, except by pre-approved means
- May display a link on Google+ to a separate site where your promotion is hosted so long as you (and not Google) are solely responsible for your promotion and for compliance with all applicable federal, state and local laws, rules and regulations in the jurisdiction(s) where your promotion is offered or promoted
- Google has the right to remove your promotion content or links from Google+ for any reason

## Risks

- Think and discuss before you launch or react
- Most social media promotion have gone wrong because a company failed to account for risks inherent to the social media space
  - Public voting
    - Watch out for cheating
    - Give the public some input but not complete control
  - Can the reputation of brand be hurt?

# MOBILE APPS

## Recent Cases of Interest

# FTC Mobile App Best Practices



**Mobile Privacy Disclosures**  
Building Trust Through Transparency

- **Build privacy considerations in from the start (“privacy by design”)**
- **Be transparent about your data practices**
- **Offer privacy settings, opt-outs, or other ways for users to control how their personal information is collected and shared**
- **Honor your privacy promises**
- **Protect kids’ privacy**
- **Collect sensitive information only with consent**
- **Keep user data secure:**
  - collect only the data you need;
  - secure the data you keep by taking reasonable precautions against well-known security risks;
  - limit access to a need-to-know basis; and
  - safely dispose of data you no longer need



## FTC Study on Health-and-Fitness Apps

- FTC study examined 2 daily activity apps connected to wearables, 2 exercise apps, 2 dietary and meal apps and 3 system checker apps
- Found that apps sent users' personal information to 76 third-parties advertisers
- Data disclosed to advertisers included: running routes, eating habits, sleeping patterns and even the cadence of how they walk or run
- Four apps sent data to one specific ad company without anonymizing the information
- 22 of the 76 third parties gathered data on users' exercise information, meal and diet information, symptoms, gender, geo-location information and ZIP codes

## COPPA Applies to Apps

- Online collection, use or disclosure of personal information from children under age 13
- Personal information:
  - First and last name
  - Address including street name and name of a city or town
  - Online contact information
  - Screen or user name that functions as online contact information
  - Telephone number
  - Social security number
  - Persistent identifier that can be used to recognize a user over time and across different websites or online services
  - Photograph, video, or audio file, where such file contains a child's image or voice
  - Geolocation information sufficient to identify street name and name of a city or town

## COPPA Applies to Apps

- Covered operators of commercial websites and online services (including mobile apps) must:
  - Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children
  - Provide direct notice to parents and obtain verifiable parental consent before collecting personal information online from children
  - Give parents the choice of consent unless integral to operation
  - Provide parents access to their child's personal information to review and/or have the information deleted
  - Give parents the opportunity to prevent further use or online collection of a child's personal information
  - Maintain the confidentiality, security, and integrity of information they collect from children
  - Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected

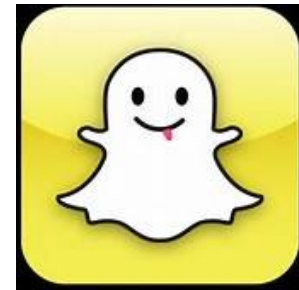


## Dokogeo, Inc. (NJ Nov. 2013)

- Mobile device maker settled NJ attorney general allegations that it violated COPPA and NJ law by collecting personal information about children who used its animation-based mobile app
- Agreed to injunction barring collection of personal information about children without consent and mandates disclosure of collection practices
- \$25k suspended judgment

## Snapchat (FTC May 2014)

- Settled FTC allegations that Snapchat made multiple misrepresentations about the length of time photos and video messages would appear before “disappearing forever”
- FTC charged that users could take a screenshot, use a third party app, and access unencrypted videos snaps
- FTC also alleged that Snapchat misrepresented its policy relating to geolocation and collected Facebook friends contact information
- Snapchat is prohibited from misrepresenting the extent to which it protects the privacy, security, or confidentiality of users’ information, and is required to implement a comprehensive data privacy program monitored by an independent privacy professional for twenty years





## Apple, Inc. (FTC Mar. 2014)

- Apple settles FTC complaint alleging that Apple failed to obtain parental approval prior to allowing children to make purchases in App Store or within apps
- The FTC alleged that Apple failed to tell parents that by entering a password they were approving a single in-app purchase and also 15 minutes of additional unlimited purchases their children could make without further action by the parent
- Apple is required to provide full refunds totaling a minimum of \$32.5 million to consumers who were charged without authorization



## Google, Inc. (FTC Sept. 2014)

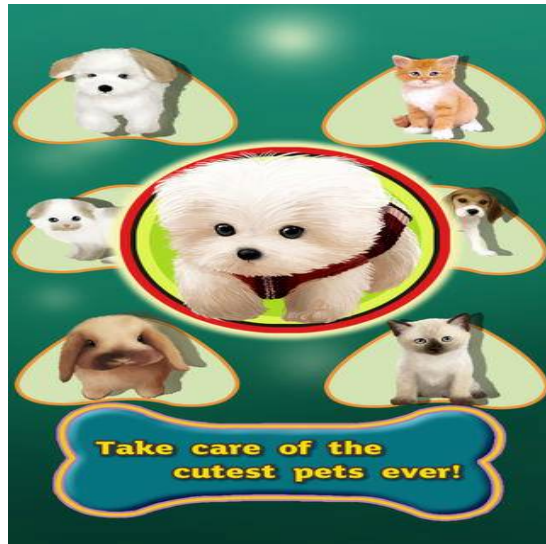
- Google settles FTC complaint alleging that it unfairly billed consumers for millions of dollars in unauthorized charges incurred by children using mobile apps downloaded from the Google Play app store for use on Android mobile devices
- FTC complaint alleged that when Google first introduced in-app charges to the Google Play store in 2011, and Google billed for such charges without any password requirement or other method to obtain account holder authorization
- Google is required to provide full refunds – with a minimum payment of \$19 million – to consumers who were charged for kids’ purchases without authorization of the account holder



## Amazon.com, Inc. (FTC July 2014)

- FTC filed complaint against Amazon.com
- Complaint alleges Amazon.com has billed parents and other account holders for millions of dollars in unauthorized in-app charges incurred by children
- Litigation continues





## Mall Girl App (CARU 2013)

- App allowed children four and up to shop for clothing at a virtual mall and dress their avatar, as well as purchase a pet, pet food and toys
- Part of app told user “Your pet is going to be taken away by the SPCA for animal neglect! Pay a fine of \$6 Cash to keep your pet.”
- CARU determined that the pet feature in the game created a sense of urgency to purchase virtual cash with real money in order to save the player’s virtual pet
- Developer agreed to discontinue feature

## Questions?

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