



Website Advertising, Marketing, and Labeling Questions

Richard Cleland, Assistant Director, Bureau of Consumer
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Moderated by August T. Horvath, Partner, Foley Hoag, LLP



Website Advertising, Marketing, and Labeling Questions: Mouse Traps and Bear Traps

Food Advertising, Labeling, and Litigation Conference: For the Food and Dietary
Supplement Industries

FDLI Thursday, September 27

Richard Cleland
Assistant Director
Division of Advertising Practices
Federal Trade Commission










Topics

- ROSCA
- Affiliate Marketing
- Free Trial Offers
- Product Reviews
- Consumer Review Fairness Act

Restore Online Shoppers Confidence Act

- Online sellers who offer consumers continuity plans
- Requirements:
 - clearly discloses all material terms of the deal before obtaining a consumer's billing information;
 - gets the consumer's express informed consent before making the charge; and
 - provides a simple mechanism for stopping recurring charges

CEREBRAL X

Product	Price
	1 Bottle of Cerebral X TRIAL Order your 30 day supply today!
Shipping:	\$4.95
Total	\$4.95
<input checked="" type="checkbox"/> Yes, add Protect Package™ for \$2.95 to my order.	
  	
Your order is due to arrive on Oct 14, 2017 .	
   	

FINAL STEP: PAYMENT INFORMATION



Billing Address Same As Shipping

Credit Card#:

.....


Expiry Date:

Jan (1) 2017


CVV:

...  CVV is the last 3 digits on the back of your card.

▶ GET MY RISK FREE TRIAL

 Secure 256-bit SSL Encryption



 Shop Online with Confidence

[Terms & Conditions](#) | [Privacy Policy](#) | [Contact Us](#)

2017 © Cerebral X US

By placing an order you will be enrolled in our membership program. This program will charge \$ 4.95 today and \$ 94.71 for your trial full-size product on the 10th day if you do not call to cancel the membership. You will receive a full-size bottle of the product for \$ 94.71 (S&H included) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling +1-888-955-9485. Open 24 hours a day, 7 days a week. Product ships in 1-3 business days.

FTC v. Triangle Media Corp., No. 18CV1388 BEN NLS (S.D. Cal.
Jun. 25, 2018)

“By placing an order you will be enrolled in our membership program. This program will charge \$4.95 today and \$84.71 for your trial full-size product on the 15th day if you do not call to cancel the membership. You will receive a full-size bottle of the product for \$84.71 (S&H included) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling +1-888-963-8460. Open 24 hours a day, 7 days a week. Product ships in 1-3 business days.”

M4M

Clearly disclose all material terms and conditions up front and don't bury key information in hard-to-find or hard-to-read mouse print or behind obscure hyperlinks. Get consumers' express informed consent before charging their credit cards. And offer an easy way to stop recurring charges.

Consumer Review Fairness Act

- The Consumer Review Fairness Act (CRFA) protects people's ability to share their honest opinions about a business' products, services, or conduct, in any forum, including social media.

The CRFA protects a broad variety of consumer assessments:

- Online reviews
- Social media posts
- Uploaded photos
- Videos (etc.)
- Covers both products and services

CRFA prohibits contracts that:

- Bar or restrict the ability of a person who is a party to that contract to review a company's products, services, or conduct;
- Imposes a penalty or fee against someone who gives a review; or
- Requires people to give up their intellectual property rights in the content of their reviews.

CRFA Prohibitions

- The CRFA makes it illegal for companies to include standardized provisions that threaten or penalize people for posting honest reviews.
 - For example, in an online transaction, it would be illegal for a company to include a provision in its terms and conditions that prohibits or punishes negative reviews by customers.
- Excludes: employment contracts or agreements with independent contractors.

Company may prohibit or remove a review that:

- contains confidential or private information – for example, a person's financial, medical, or personnel file information or a company's trade secrets;
- Is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
- Is unrelated to the company's products or services; or
- Is clearly false or misleading.

Penalty

- Enforced by FTC and state Attorneys General;
- A violation of the CRFA is treated as violating an FTC rule
- Civil penalty of up to \$41,484 per violation.

Law Enforcement Actions:

- FTC v. Roca Labs, Inc., No. 8:15-cv-2231-T-35TBM, (M.D. Fla. Sept. 14, 2018)(Summary Judgment)
- FTC v. Sellers Playbook, Inc., No. 18-SC-2207 DWF/TNL (D. Minn. Jul. 30, 2018)(Complaint alleges that defendants offered, in the course of selling their business opportunities, form contracts that contained provisions that bar or restrict the ability of the consumer purchasing Defendants' business opportunities from engaging in reviews, performance assessments, and similar analyses of defendants' goods, services, or conduct.)

Recommendations

- Review your form contracts, including online terms and conditions;
- Remove any provision that restricts people from sharing their honest reviews, penalizes those who do, or claims copyright over peoples' reviews (even if you've never tried to enforce it or have no intention of enforcing it);
- Let people speak honestly about your products and their experience with your company.

Affiliate Marketing

- FTC v. LeadClick Media, LLC, Nos. 15-1009cv, 15-1014-cv (2nd Cir. Sept. 23, 2016)
- According to the decision, “LeadClick knew that deceptive false news sites were prevalent in its affiliate marketing network, directly participated in the deception, and had the authority to control the deceptive content of these fake news sites, but allowed the deceptive content to be used in LeaSpa advertisements on its network.”
- LeadClick knew that the news sites were phony and actively participated in creating their content.
- Liable for \$11.9 million

Risk Free Trials

- A trial is not “risk free” if it requires purchasers to pay shipping and handling, imposes any financial burden on returning a product (return shipping and handling or restocking fee) or requires consumers to agree to a continuity program.
- “When making “Free” or similar offers all the terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously at the outset of the offer” 16 CFR 251.1(c)
- FTC v. Health Research Labs., No. 2:17-cv-00467-JDL (D. Maine Nov. 30, 2017)
- FTC v. Triangle Media Corp., No. 18CV1388 BEN NLS (S.D. Cal. Jun. 25, 2018)

Product Reviews

- A product review from a purported user must reflect the honest opinions, findings, beliefs, or experiences of the user who must be an actual user of the product at the time of the review. 16 CFR 255.1
- Credibility of consumer product reviews are being challenged
- False reviews are prohibited
- If consumers receive payment or free products, those facts must be disclosed. If the media doesn't allow for disclosure then review should not be used.

Contact Information

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Shipping and Handling

“Free Shipping” – What Does It Mean?

- FTC’s “Free” Guides:
 - “when the purchaser is told that an article is ‘free’ if another article is purchased, the word ‘free’ indicates that (s)he is paying nothing for that article and no more than the regular price for the other.”
- What about free shipping?
 - Although shipping is not an “article,” the principle likely applies here too



overstock.com®

Examples

- Many states also have laws that prohibit “hidden charges” and/or deceptive “combination sales packages”
- Embedding shipping costs into product pricing can implicate such state laws
- There are also risks of an NAD challenge



Recommendations:

- Have in place a policy for customer support to follow when responding to these type of inquiries/complaints
- Revisit shipping representations
 - Consider “shipping included” instead of “ships free”
 - Remove shipping (e.g., “Shipping - \$0.00) as a line item on invoices



Influencers

Is It An Ad?

- Not all sponsored/branded content is an ad
- Factors to Consider:

Does the content mention or show the advertiser's product or service?



Could a selling message be implied?



Does the content help to promote the product or service?

Ad or Not?

- FTC Example: Featured article in Fitness Magazine about the 20 most beautiful places to travel
 - Article paid for by Winged Mercury Footwear – Article says “Presented by...”
 - No product mentioned or promoted in the article
 - Article does not have to be labeled as an “AD”

Buzzfeed Article

10 Beautiful Places In The World That Actually Exist

Fantastical places exist not only in movies and fairy tales, but in the real world too! You've got to see these places to believe them. Just like [Pepsi NEXT](#), you've got to taste it to believe it.

posted on May 9, 2012 at 2:26pm EDT



1. Wisteria Tunnel



Via [jeanmiegardenie.com](#)

Wisteria Tunnel is located at the Kawachi Fuji Gardens in Kitakyushu, Japan. Flowering trees hang overhead and the different colored rows speckle the garden.

GE Lunar Footprint

SUPERCOMPRESSOR

GEAR

TECH

RIDES



HOME

VICE

SHOP



Orange Is The New Black

SECTIONS HOME SEARCH The New York Times LOG IN

1. OP-ED CONTRIBUTOR 2. OP-ED CONTRIBUTOR 3. MACHINE LEARNING Getting the Most Out of Apple iOS 8 4. Pursuing the Impossible, and Coming Out on 5. Starting Friday, U.S. Will Ease Restrictions on Travel to Cuba 6. Use the iPhone's iOS 8 Like a Pro 7.

PAID POST

BrandStudio NETFLIX ORANGE IS THE NEW BLACK

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 STEININGER

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

Today, some 15,000 are held in federal custody and an additional 100,000 are behind bars in local jails. That sustained growth has researchers, former inmates and prison reform advocates calling for women's facilities that do more than replicate a system designed for men.

"These are invisible women," says Dr. Stephanie Covington, a psychologist and co-director of the Center For Gender and Justice, an advocacy group based in La Jolla, Calif. "Every piece of the experience of being in the criminal justice system differs between men and women."

Cole Haan

.Mic



HISTORY BEGINS HERE

This series spotlights young women who are helping set a new course for our generation. Across industries, they're challenging the status quo and empowering us all to think differently about the way business is done.

SEE MORE FROM COLE HAAN



In collaboration with **COLE HAAN**



IN COLLABORATION WITH COLE HAAN

How to Succeed in Science, According to Some of the World's Brightest Female Scientists

Unlock your inner genius. Sponsored by Cole Haan.

By Brooke Martin - November 7, 2014

If It's Branding But Not An Ad

- Disclosure Implications:
 - If its “sponsored” or “branded content”- but not an ad- more leeway with disclosures
 - Sponsored/Presented/Promoted would be OK

If It's Clear It's An Ad

- Are consumers likely to recognize it's an ad?
- If not, or if it's uncertain: **DISCLOSE IT.**
- Factors to Consider:
 - How similar is the format to other non-advertising content on the page
 - To what extent is the native ad distinguished from advertising content
 - Is there other branding
 - FTC will look at overall net impression
 - Context is Key

Why Does it Matter?

- Advertisers may be liable for a speaker's actions.
 - Failure to identify sponsored content
 - Failure to disclose connections
 - False claims.
- Advertisers may be liable *even if they did not authorize, approve, or use the claims.*

Food + Influencer Marketing

- 1 Food is one of the most popular subjects on social media.
- 2 Not every consumer is a runner, cares about fashion, or watches movies but every single person on the planet eats food.
- 3 Eating is profoundly social and is culturally an occasion for sharing, giving, celebrating, and expressing.
- 4 Food is very visual and visual content generates 94% more engagement than text alone.
- 5 Food and recipe influencers are one of the fastest growing sources of food-related content.

Food Is Made For Influencer Marketing

In the last year, views of food and recipe content grew 59% and social engagement (likes, comments and shares) on food channels rose by 118%

– ThinkWithGoogle

Behavior Has Changed

- Cookbooks are out.
- When searching for new recipes, consumers turn to Pinterest, videos on sites like Delish, or specific recipes on Google.
- They rely on recommendations, reviews, photography.

High Risk, High Reward

- Food brands are more likely than other products to embrace a high risk, high reward strategy.
- Lay's – Create a new chip flavor for \$1M prize
- Tyson's Chicken Nuggets



FTC Updated Guidance for Influencers and Marketers

The infographic consists of four vertical columns. The first two columns are green, and the last two are red. Each column contains an icon, a title, and a brief explanation.

- Column 1 (Green):** Icon of a handshake with a dollar sign. Text: "Clearly **DISCLOSE** when you have a financial or family relationship with a brand".
- Column 2 (Green):** Icon of a price tag. Text: "Treat sponsored tags, including tags in pictures, **LIKE ANY OTHER** endorsement".
- Column 3 (Red):** Icon of three people in a circle. Text: "**DON'T ASSUME** followers know about all your brand relationships".
- Column 4 (Red):** Icon of a magnifying glass over a question mark. Text: "Don't use **AMBIGUOUS DISCLOSURES** like 'Thanks,' #collab, #sp, #spon, or #ambassador".

Column 1 (Green): Icon of a target with an arrow. Text: "Ensure your sponsorship disclosure is **HARD TO MISS**".

Column 2 (Green): Icon of a camera. Text: "On image-only platforms like Snapchat, **SUPERIMPOSE DISCLOSURES** over the images".

Column 3 (Red): Icon of two speech bubbles. Text: "Don't assume disclosures **BUILT INTO** social media platforms are sufficient".

Column 4 (Red): Icon of a magnifying glass over a 'W'. Text: "Don't rely on disclosures that people will see only if they **CLICK 'MORE'**".

<https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking>

FTC Guidance on Instagram

- ***What about a disclosure in the description of an Instagram post?***
 - If an Instagram post makes an endorsement through the picture or the first three lines of the description, any required disclosure should be presented without having to click “more.”
- ***How can I make a disclosure on Snapchat or in Instagram Stories?***
 - You can superimpose a disclosure on Snapchat or Instagram Stories just as you can superimpose any other words over the images on those platforms. The disclosure should be easy to notice and read in the time that your followers have to look at the image.

What's A Reasonable Monitoring Program?

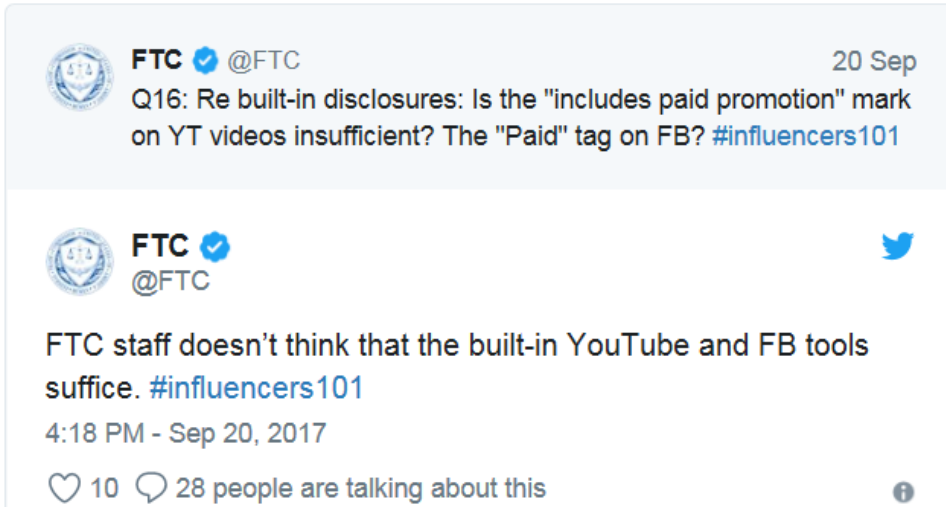
Our company uses a network of bloggers and other social media influencers to promote our products. We understand we're responsible for monitoring our network. What kind of monitoring program do we need? Will we be liable if someone in our network says something false about our product or fails to make a disclosure?

Advertisers need to have reasonable programs in place to train and monitor members of their network. The scope of the program depends on the risk that deceptive practices by network participants could cause consumer harm – either physical injury or financial loss. For example, a network devoted to the sale of health products may require more supervision than a network promoting, say, a new fashion line. Here are some elements every program should include:

1. Given an advertiser's responsibility for substantiating objective product claims, explain to members of your network what they can (and can't) say about the products – for example, a list of the health claims they can make for your products, along with instructions not to go beyond those claims;
2. Instruct members of the network on their responsibilities for disclosing their connections to you;
3. Periodically search for what your people are saying; and
4. Follow up if you find questionable practices.

It's unrealistic to expect you to be aware of every single statement made by a member of your network. But it's up to you to make a reasonable effort to know what participants in your network are saying. That said, it's unlikely that the activity of a rogue blogger would be the basis of a law enforcement action if your company has a reasonable training, monitoring, and compliance program in place.

What About Built-In Disclosure Tools?



The same applies to built-in Instagram tool. #Influencers101

What About Disappearing Content?



FTC 
@FTC



When all photos will be seen, disclosure on first one could be good enough if it stands out & viewers have time to notice it
[#influencers101](#)

FTC  @FTC

Q9: In a series of short, disappearing posts like Snap or IG stories is disclosure necessary on all posts or just the 1st? #Influencers101

3:56 PM - Sep 20, 2017

 12  21 people are talking about this



Anything New On Facebook Likes?



Before taking any action, we'd have to answer whether simple likes are material. [#influencers101](#)

Can We Just Send Product And See What Happens?



FTC ✓

@FTC · 20 Sep 2017

↻ 291

♥ 763



Yes, it is an ad - if they send it to you because you're an influencer or for you to review it. [#Influencers101](#)

FTC ✓ @FTC

Q21: A company sends something for free. No demand to post & no pay. If you post bc you like it & use it, is that an #ad? #Influencers101

User-Generated Content

Want to Share A User's Post? Ask First.



linatvylor • Follow

#konsumopfer #vans #vansgirls
#vansoffthewall #vanssk8hi #ootd #newin
#shoes #fancysocks #girlswithtattoos
#girlswithink #inked #alternative #yesfilter
#impericon #vscocam

vans Hey! Great shot, would you mind if we repost with credit to you?

linatvylor A repost sounds great, I'm happy you like my picture! @vans 😊

mattfraser9 Congrats on the @vans feature!



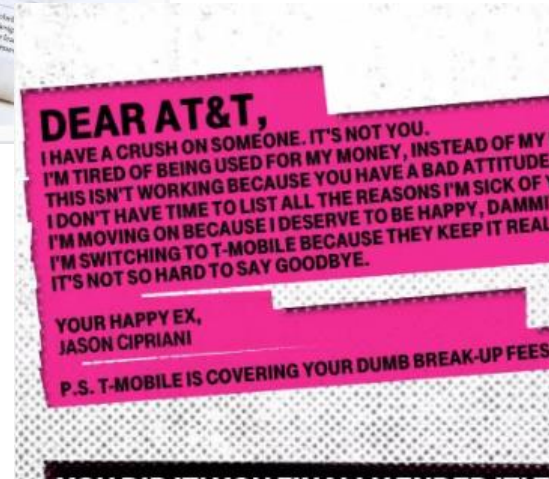
392 likes

JANUARY 8

Add a comment...



Other UGC Examples: Warby Parker, Lululemon, T-Mobile...



Be Clear About The Rules

- How can submissions be used?
- For how long and where?
- Will users get anything in exchange?
- Is it proportionate to what the user is providing?
- Time, geographic, or other limitations?
- Is it a contest or a sweepstakes? Or neither?



You've Been Trolled

Wendy's: Fresh, Never Frozen



Fresh beef available in the contiguous U.S., Alaska and Canada



Wendy's ✓
@Wendys

 Follow

Our beef is way too cool to ever be frozen. 😎

6:24 PM - 30 Dec 2016

🔄 2,524 ❤️ 18,012

Twitter Troll Strikes



Wendy's Engages



A screenshot of a Twitter thread on a dark background. The thread consists of three tweets. The first tweet is from user Thuggy-D (@NHride) asking Wendy's if they deliver raw food on a hot truck. Wendy's (@Wendys) replies asking where cold things are stored if not frozen. Thuggy-D replies that McDonald's is better for breakfast. Each tweet shows engagement metrics like replies, retweets, and likes.

Thuggy-D @NHride · 9h
@Wendys so you deliver it raw on a hot truck?
2 replies 53 retweets 15 likes

Wendy's @Wendys · 9h
@NHride Where do you store cold things that aren't frozen?
1 reply 133 retweets 371 likes

Thuggy-D @NHride · 9h
@Wendys y'all should give up.
@McDonalds got you guys beat with the dope [redacted] breakfast
3 replies 67 retweets 26 likes

Wendy's Frosts The Troll



Wendy's 
@Wendys

 Follow

[@NHride](#) You don't have to bring them into this just because you forgot refrigerators existed for a second there.

12:31 PM - 2 Jan 2017

  8,971  24,127

Practice Tips

- Think carefully before you respond.
- The troll introduced advertising issues as to which brand's breakfast was the bestseller.
- Had Wendy's been careless, they could have forgotten to untag McDonald's and prompted an advertising challenge.

Rights Of Publicity

No Spielburgers For You!



As a tribute to Steven Spielberg's *Ready Player One*, Carl's Jr. is renaming its Charbroiled Sliders in his honor...

313K views 0:07 / 1:00

Carl's Jr. @CarlsJr
In honor of Steven Spielberg's [#ReadyPlayerOne](#), we're changing the name of our Charbroiled Sliders to [#SpielBurgers](#). Spielberg hasn't signed off yet, but we assume he's cool with it.
12:00 AM - Mar 26, 2018
492 126 people are talking about this

Airbnb – Julia Child Contest



*...walk the halls of
Julia Child's former
home...comb over
the knick knacks in
her kitchen exactly as
she left them..."*

Best Practice Tips

- References to celebrities should be considered risky unless you have permission
 - It is the rare exception that they engage without demanding money.





National Advertising Division Cases on the Issues in this Panel

August T. Horvath

Foley Hoag LLP





Product Reviews

NAD Case No. 6017 (10/31/2016)

VitaPulse by Princeton Nutrients

- Princeton posted reviews with star ratings on its site and claimed an average rating of 4.5 out of 5. Below this, it placed “several cherry-picked 5-star reviews.”
- During the challenge, it started including all product reviews received from customers on its page.
- “It is important that when an advertiser includes product reviews on its website, that the product reviews are what they appear to be – authentic consumer reviews of the product, representative of the whole range of product reactions, and reflective of the actual opinions of consumers.”



NAD Case No. 6042 (12/28/2016)

FitTea by Fit Products, LLC



- Fit Products website had a “Results and Reviews” tab; showed re-posted Instagram endorsements, some by paid endorsers, others collected without incentive.
- Below that, listed reviews and star ratings from customers collected from website purchasers.
- Fit Products contended that it is not “advertising” when it collects reviews and has no obligation to substantiate claims made by reviewers; NAD disagreed.
- “The use of product reviews on an advertiser’s website is not misleading where the advertiser can demonstrate that it collects product reviews in a systematic way, that it posts all product reviews to the website, and that it collects product reviews from a representative sample of customers who purchase the product.”

NAD Case No. 6042 (12/28/2016)

FitTea by Fit Products, LLC

- “NAD was concerned, however, that the product reviews are posted adjacent to product endorsements ... It is important for consumers to be able to distinguish between independent reviews and testimonials or endorsements used as advertising for a product.”
- During challenge, Fit Products began adding “#ad” disclosures to those of its re-posted Instagram posts that were sponsored.
- Fit Products also adopted a Social Media Policy requiring paid endorsers to disclose their connection to FitTea and undertook to monitor paid posts to ensure compliance.



Influencers

CARU Case No. 5988 (8/12/2016)

EvanTube YouTube Channels

- YouTube personality Evan (10 years old at time of challenge) and family produce popular YouTube videos (2 million subscribers). Many were “unboxing” videos.
- These earned revenue from pre-roll advertising and product sponsorship.
- One toy company that sent Evan free products to unbox requested that Evan NOT mention the connection to the company or that the company had provided free product.
- Other toy companies requested disclosure, and eventually Evan’s family learned about the FTC Endorsement Guides.



CARU Case No. 5988 (8/12/2016)

EvanTube YouTube Channels

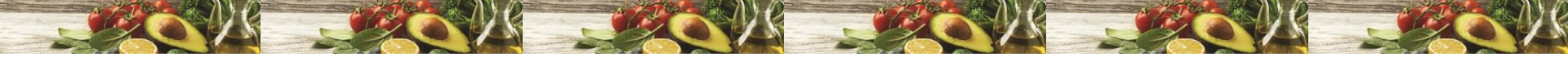
- NAD determined that unboxing videos where the toy or game company has provided free product or other compensation are “advertisements.”
- Despite general compliance with Endorsement Guides, it may not be clear to child viewers that unboxing videos are advertising.
- Pre-roll ads may make it more confusing because they imply that content afterward is not advertising.
- CARU recommended audio disclosure at start of video stating that the videos are advertisements – not just that the product was provided free, that the video was “brought to you by [brand],” etc.
- Video supers are insufficient.

CARU Case No. 6121 (10/9/2017)

Ryan Toys Review YouTube Channel

- YouTube personality Ryan (6 years old at time of challenge) and family produce popular YouTube videos (9 million subscribers, 15 billion views). Earns over \$1 million per month of ad revenue.
- People watch Ryan shop for, buy, unbox, play with and “review” toys.
- Disclosure of sponsorships in videos is inconsistent.
- CARU staff noted that pre-roll advertisements included one for a wine, and another for an R-rated film. On a channel targeted at 6-year-olds, don’t do that!
- NAD determined that sponsored videos are “advertisements” and again recommended very clear audio disclosure.





Affiliate Marketing

NAD Case No. 6210 (9/18/2017)

BuzzFeed – “Shopping Guides,” Affiliate Marketing

- BuzzFeed is a digital media publisher that creates and publishes news and entertainment content, including “shopping guides” (product recommendations from its editorial staff).
- Recommendations contain links to purchase products; some are monetized through an “affiliate link.” These are appropriately disclosed.
- One shopping guide written by an editor made claims about St. Ives Renewing Collagen & Elastin Moisturizer for which NAD requested substantiation. Research and writing was done by the editor, but the purchase link was affiliate monetized.
- Issue: “whether the presence and influence of the affiliate link transforms the publisher’s own content into advertising for the product it promotes.”
- NAD accepted BuzzFeed’s arguments that the editorial claim was not advertising because not paid for or influenced/controlled by the advertiser.
- NAD was convinced that the affiliate link did not influence the content because the links were added after the content was written; motivation was editorial (views).



Website Advertising and Marketing Claims that Spark Litigation

August T. Horvath

Foley Hoag LLP



Essentia Water

- Essentia Water LLC, founded 1998
- Markets ionized alkaline water
- \$124 million in retail sales, 2017

Essentia Water

- Complaint filed
Sept. 19, 2018

Case 1:18-cv-05257 Document 1 Filed 09/19/18 Page 1 of 13 PageID #: 1

United States District Court
Eastern District of New York

1:18-cv-05257

Keith Kennedy individually and on behalf
of all others similarly situated

Plaintiff

- against -

Complaint

Essentia Water, LLC

Defendant

Plaintiff by attorneys allege upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Essentia Water, LLC (“defendant”) manufactures, distributes, markets, labels and sells water products under the “Essentia” line in various sizes, including 33.8 oz (1 L).
2. The Products emphasize their ability to provide superior hydration, as measured by hydration markers, compared to non-Essentia products, thereby commanding a premium price.
3. The principal display panel contains the product name “Essentia,” the statements “overachieving H₂O,” “Ionized Hydration,” “9.5 pH or higher” and the logo of a “plus symbol” squared off by red bars of varying length.

Essentia Water



4. The Information panel contains the logo and descriptive text:

We're here to put a flag in the ground and tell the world that a better you starts with a better water. **#EssentiaNation**

What Makes Essentia Better? Our proprietary process turns water from any source into supercharged ionized alkaline water. It's even too pure to be tested by pH strips.

Essentia Water



5. The digital and print promotional materials emphasize the Product's special ability to achieve hydration, beyond traditional tap or bottled water.

Essentia Water



6. The Product's website claims to have scientific support for the claims it delivers superior hydration and boasts the support of medical doctors.

Essentia Water

overachieving H₂O*

The result is supercharged ionized alkaline water that has been clinically shown to be more effective at rehydrating.*

[LEARN MORE](#)

We believe proper hydration increases human potential. Essentia's proprietary ionization process creates a clean and smooth tasting 9.5pH or higher alkaline water that's better at rehydrating. We have backed it up with solid science.* Essentia was included in the first ever hydration study of its kind.

The clinical trial, published in the Journal of the International Society of Sports Nutrition (JISSN), measured how well a leading bottled water and Essentia Water rehydrated participants after moderate aerobic exercise. The results showed that Essentia Water was more effective at rehydrating.*

"These scientific findings reinforce feedback we've heard for several years from doctors, athletes, and all kinds of overachievers aiming to be at the top of their game. Essentia Water helps them rehydrate better," said Ken Uptain, founder and CEO of Essentia Water.

Essentia is the only bottled water listed in the Physicians' Desk Reference, commonly recommended by physicians for hydration.

Essentia Water



HOME ESSENTIA WATER ESSENTIA NATION OUR STORY STORE LOCATOR CA

MEET THE OVERACHIEVERS

COMPETING, PERFORMING, CREATING AND STRIVING TO BE THE BEST

Every day, you wake up with the chance to be the best version of yourself. Where you can do more of what you love, with the people you love, and feel great every step of the way. We believe in living passionately, purposefully and not being afraid to let your true colors shine. We also believe that good hydration is the key to unlocking your full potential.

CHECK OUT MORE OVERACHIEVERS #ESSENTIANATION



Essentia Water



kellyoubrejr • Follow

kellyoubrejr Only one thing can get me ready for practice. A light light tug of war with @essentiawater #EssentiaNation

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blakehagerstrom @andrew_ayroso
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Essentia Water




Essentia Water

 **Alyssa Adcock**
@TungstenOcelot Follow


Why #scicomm is important..
#EssentiaNation #ThatsDefinitelyNotpH9




9:46 AM - 27 Apr 2018


5 Likes 

5 5

 Tweet your reply

 **KrawLobster** @KrawLobster · Apr 27
Replying to @TungstenOcelot
Looks like it's around 7 to me

1 5

 **KrawLobster** @KrawLobster · Apr 27
Actually, supposedly the minimum ionic strength required for pH strips is 150 ppm and they have 90 ppm. Since there are components in the pH strips which

Core Hydration

Case 1:18-cv-05188 Document 1 Filed 09/14/18 Page 1 of 12 PageID #: 1

- Complaint filed
Sept. 14, 2018

United States District Court
Eastern District of New York

1:18-cv-05188

Sean Duffy individually and on behalf of all
others similarly situated

Plaintiff

- against -

Complaint

Core Nutrition, LLC

Defendant

Plaintiff by attorneys allege upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Core Nutrition LLC (“defendant”) manufactures, distributes, markets, labels and sells bottled water products under the “Core Hydration” line in various sized bottles, including 20 oz (591 mL).
2. The Products emphasize their ability to provide hydration beyond that supplied by non-Core Hydration products, due to its purported pH level.
3. The below images are examples of a bar and pieces product label.
4. The principal display panel contains the product name, “Core Hydration,” and the identity statement/description of the product as “Nutrient Enhanced Perfect pH* Water with Electrolytes & Minerals.”
5. The asterisk refers to the “Perfect pH: 7.4* - your body's natural pH balance.”

Core Hydration



6. The supplemental panel of the Products state:

The pH that naturally occurs in your body happens to be perfect, so it should come as no surprise that we mirrored our water after it.

core® hydration is ultra purified for a clean, crisp taste and has just the right amount of electrolytes & minerals to match your body's natural pH of 7.4...or simply put - the Perfect pH.

So, no matter what you do to get thirsty, hydrate with Core® and feel the benefits of Perfect pH Water.

7. The side panel of the Products states, "Electrolytes + minerals for hydration and balance."

8. Defendant claims the Product contains "electrolytes + minerals, for hydration and balance" referring to "your body's natural pH balance" of 7.4.