

The FTC's Guides for the Use of Endorsements and Testimonials in Advertising: Recent Revisions

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FTC Advertising Law 101

- Ads must be truthful and substantiated
- Ads are deceptive if they are likely to mislead consumers about something important to decision to use/purchase
 - Express and implied claims can mislead
- Ads are evaluated as a whole
- Ads are interpreted from standpoint of reasonable consumer
 - Ad may have more than one reasonable interpretation



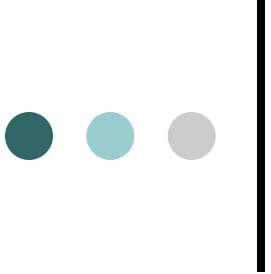
Endorsement Guides

- Administrative interpretations of the law intended to provide the basis for voluntary compliance with the law by advertisers and endorsers
- There are **no fines** for violating the Guides
- Practices inconsistent with the Guides may result in corrective action under the FTC Act by the Commission
- Whether a particular endorsement or testimonial is deceptive will depend on the specific circumstances of the advertisement at issue



What Is an Endorsement?

- Any advertising message that consumers perceive to represent the personal views of the speaker
- The views expressed by the endorser may be identical to those of the sponsoring advertiser
- Endorsement can include: verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization



The Revised Guides: Principal Changes

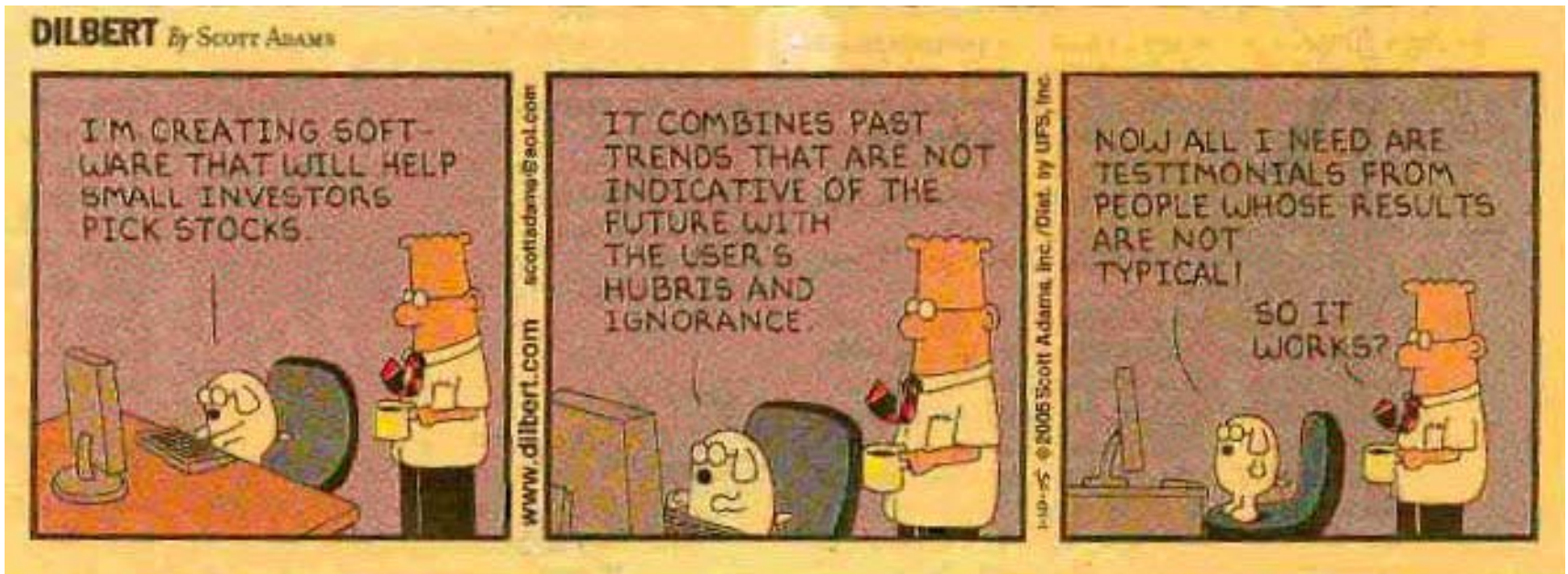
- Requiring disclosure when advertiser has paid for study touted in ad
- Deletion of “results not typical” safe harbor
- Addition of examples of disclosing material connections in social media marketing



Sponsorship of Studies

- Old Guides: No need to disclose when advertiser paid for study cited in ad (on theory that substantiation requirements would be sufficient to prevent deception)
- Revised Guides: Knowing advertiser paid for study may affect weight consumers give to study results, so study sponsorship should be disclosed

Generally Expected Results ...Typicality





Endorsements: Typicality

- An advertisement:
 - employing an endorsement;
 - reflecting the experience of an individual or a group of consumers;
 - on a central or key attribute of the product or service;

will be interpreted as representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use



Endorsements: “Results Not Typical”

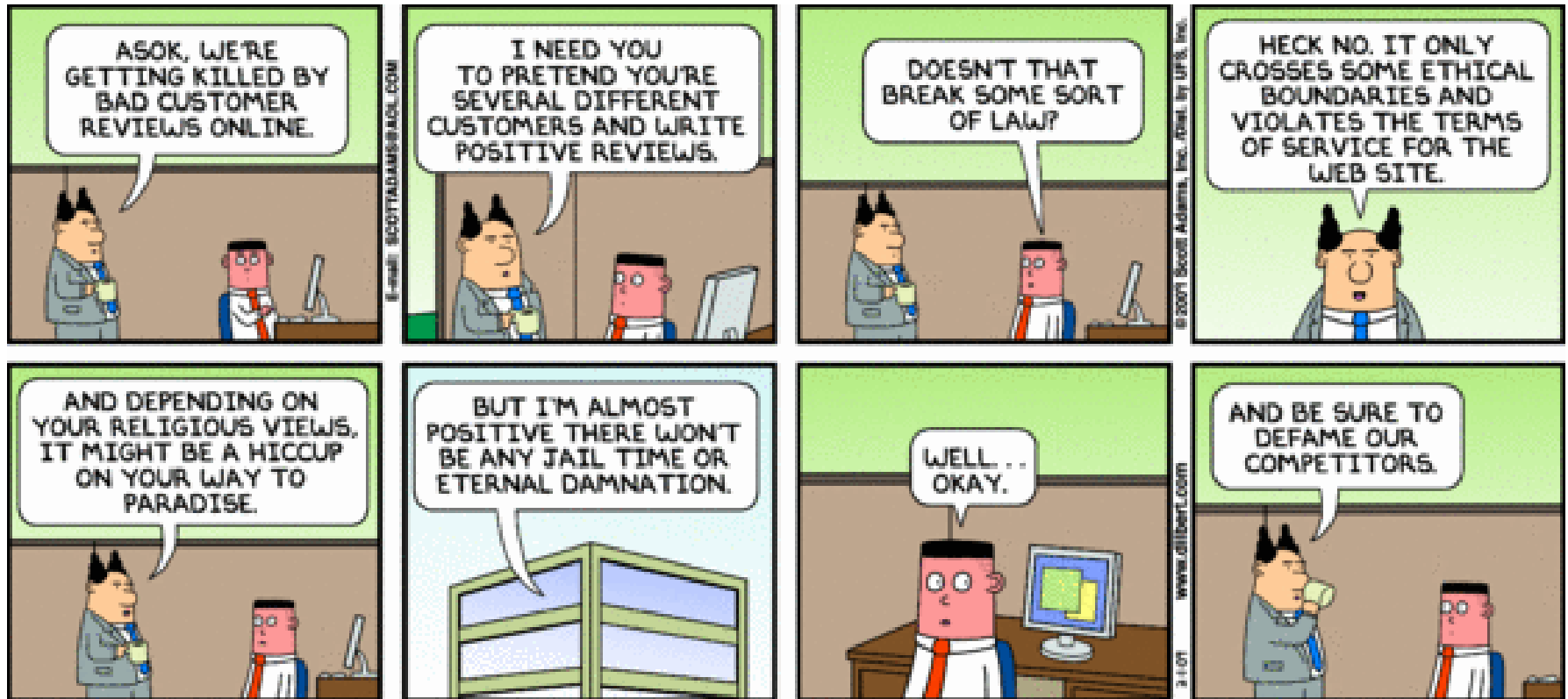
- Unless the advertiser possesses and relies upon adequate substantiation for this representation, the ad should either:
 - A. Clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances; or
 - B. Clearly and conspicuously disclose the limited applicability of the endorser’s experience to what consumers may generally expect to achieve.
- **Revised Guides eliminate option B**



Endorsements: “Results Not Typical”

- So, advertiser needs to be able to substantiate that an endorser’s results are what users can generally expect
- If not, then advertiser needs to clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances
- Still possible to use outlier testimonials, but there’s no longer a safe harbor ... net impression controls

Social Media Marketing





Advertising in Social Media

- Social networking sites and blogs have developed into a medium for marketers to reach targeted audiences
- Same advertising rules apply regardless of medium or venue
- But application of rules to social media may be less obvious than application to traditional media
- Updates to Endorsement Guides are intended to help clarify application of Section 5 of FTC Act to social media marketing



Product Promotion by Consumers

- The FTC **is not** concerned with *genuine* consumer promotions or product reviews
- These types of product promotion are not likely to present issues under Section 5 of the FTC Act
- The FTC **does** have concerns when consumers are speaking on behalf of marketers and that fact is not made clear



Material Connections Between Advertisers & Endorsers

- When an advertiser and an endorser have a relationship that audience wouldn't reasonably expect (a "material connection"), relationship should be disclosed
- Examples of such connections include:
 - Seller is compensating endorser
 - Endorser is employee or business associate of seller
 - Endorser is related to seller



Application of Endorsement Guides to Word of Mouth Marketing

- Consumers wouldn't normally expect that another consumer has been compensated to talk to them about a product
- Consumers may reasonably give more weight to another's views -- based on the assumption that speaker is independent from the seller -- than they would if they knew the speaker was being compensated



Financial Ties -- Context Matters

- Financial tie between seller and endorser should be disclosed, unless the tie is clear from the context
- In case of many online/offline product review sites, audience wouldn't expect reviewer is paying for the products reviewed, so no disclosure is needed



Celebrity Endorsers

- In conventional ads, it's not necessary for an ad to disclose that a celebrity is being paid, because in that context payment would be understood
- Outside of conventional ads (on talk shows, social networking sites): the relationship with the advertiser should be disclosed when a celebrity talks up a product because payment isn't obvious in that context



When Does a Consumer Become an Endorser?

- Answer: When – viewed objectively – the consumer is being sponsored by the marketer
- Consider: Is speaker acting independently (in which case there's no endorsement); or is speaker acting on behalf of advertiser/agent such that speaker's statement is an "endorsement" that's part of an overall marketing campaign?



Free Products

- Free products can be considered compensation
- What is the nature of the relationship between the advertiser and the reviewer?
- What is the context in which the product is reviewed?
- Is the connection between the advertiser and the reviewer obvious to the audience?

Blog Product Review

Chief Family Officer: Review & Giveaway: Hallmark Encouragement Cards - Windows Internet Explorer

http://www.chieffamilyofficer.com/2009/09/review-giveaway-hallmark-encouragement.html

File Edit View Favorites Tools Help

Google rocks in my dryer reviews Go 509 blocked Check AutoLink AutoFill Send to rocks in my dryer Settings

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TUESDAY, SEPTEMBER 08, 2009

Review & Giveaway: Hallmark Encouragement Cards

 I was sent some [Hallmark encouragement](#) cards to check out, and they're terrific! What a quick and easy way to cheer someone up or just let them know you're thinking of them. Some have sound, some are funny, and some are just plain sweet. Many of the cards are from the [Edge of Motherhood](#) line, and are specifically designed for mothers who want to send a pick-me-up to another mom.

One great thing about these cards is that they're really affordable. The every day cards I got are a mere 99-cents each, and the sound cards are just \$2.99. Some of the cards have a fabulous little feature on the back: a little headshot of the writer plus a little blurb about them. I've never seen that before, but it's a nice touch. (The web site sizes and prices are different from what's on the back of the cards I received.)

ABOUT THIS SITE



My name is Cathy, and I'm an attorney, wife and mom. I'm also the CFO of our family. I write daily about family finances, parenting, and cooking, and post reviews and links to great deals at [CFO Reviews](#).

Learn more about CFO and read the [Best of CFO](#).

Contact me at [cfblog \[at\] gmail \[dot\] com](mailto:cfblog[at]gmail[dot]com).

Please read this [disclaimer/disclosure](#).

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http://www.hallmark.com/

start 2 Microsoft O... Investigator Tr... 2 Paint 4 Internet Ex... H:\Speeches a... 2 Notepad 3:08 PM



Message Boards

- Employee relationship should be disclosed
- Advertiser (and its agents/p.r. firms) should have policies in place and train employees regarding acceptable social media practices



Street Teams

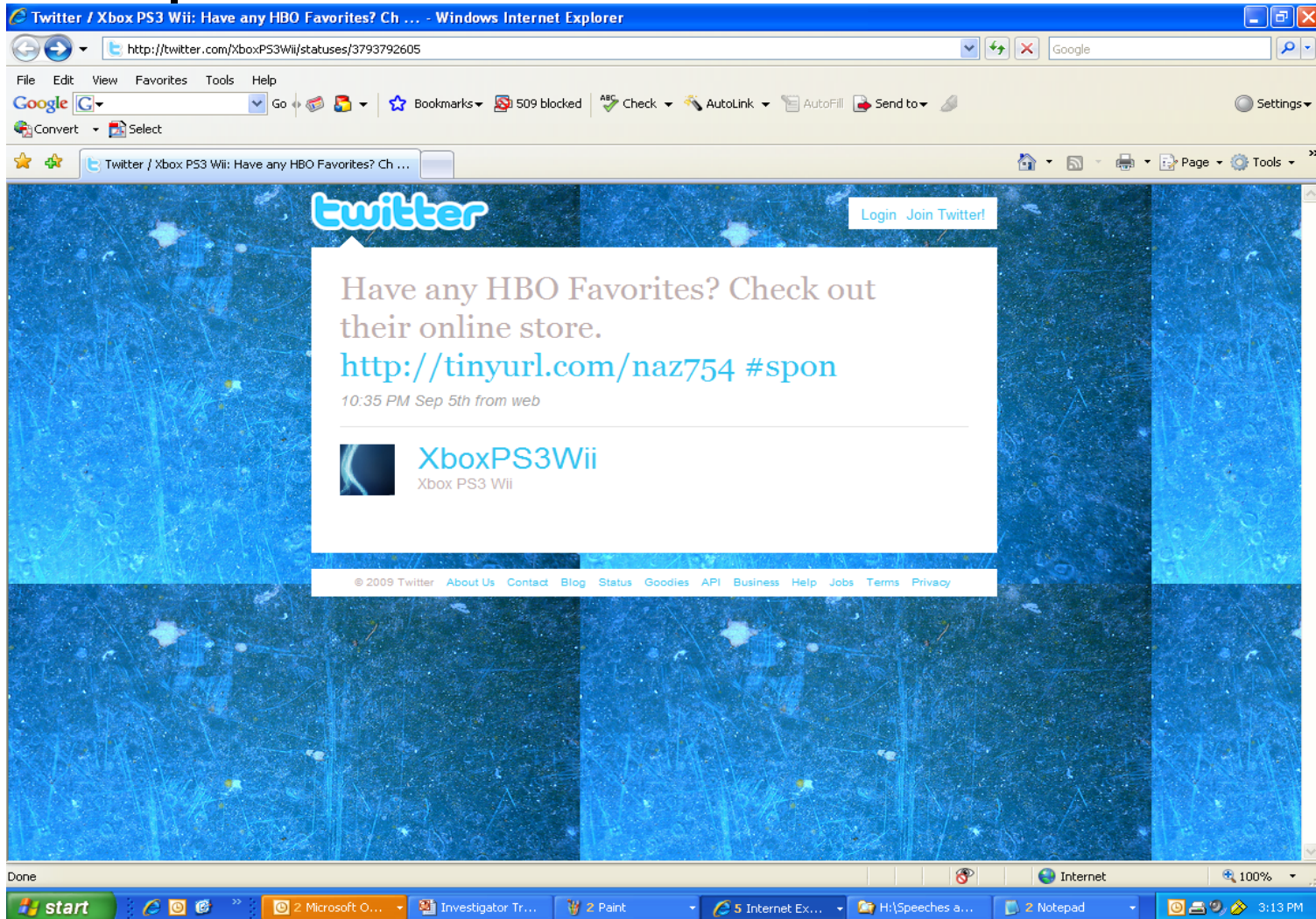
- A marketing program to promote the advertiser's products
- Something of value is being provided in exchange for promotion of the product
- Disclosure is needed, and the advertiser should take steps to ensure disclosures are being provided



How Should Material Connections Be Effectively Disclosed?

- Disclosure should be part of the message so it can't be missed. E.g.:
 - Acme Co. provided this product for me to review
 - XYZ Co. sent me to Adventureland to experience its theme park
 - On Twitter: #paid, #ad
- Word of Mouth Marketing Ass'n: Social Media Marketing Disclosure Guide

Sponsored Tweet



The image is a screenshot of a Windows Internet Explorer browser window. The address bar shows the URL <http://twitter.com/XboxPS3Wii/statuses/3793792605>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The toolbar contains various icons for navigation and utility. The main content area displays the Twitter interface with a blue background. At the top left is the Twitter logo, and at the top right are links for "Login" and "Join Twitter!". The central focus is a white tweet box containing the text: "Have any HBO Favorites? Check out their online store." followed by the URL <http://tinyurl.com/naz754> and the hashtag #spon. Below the text, it says "10:35 PM Sep 5th from web". The user's profile information is shown as "XboxPS3Wii" with a small profile picture icon and the text "Xbox PS3 Wii". At the bottom of the tweet box, there is a footer with copyright information: "© 2009 Twitter" and links for "About Us", "Contact", "Blog", "Status", "Goodies", "API", "Business", "Help", "Jobs", "Terms", and "Privacy". The Windows taskbar at the bottom shows the Start button, several open applications including Microsoft Office, Investigator, Paint, Internet Explorer, and Notepad, and the system clock indicating 3:13 PM on September 5, 2009.

Twitter / Xbox PS3 Wii: Have any HBO Favorites? Ch ... - Windows Internet Explorer

<http://twitter.com/XboxPS3Wii/statuses/3793792605>

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<http://tinyurl.com/naz754> #spon

10:35 PM Sep 5th from web

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When Is Marketer Liable for Endorser's Statement?

- If endorser makes false or unsubstantiated claims for product, advertiser is potentially liable. To limit potential liability:
 - Advertiser should ensure its endorsers receive guidance/training re need to ensure statements are truthful/substantiated
 - Advertiser should monitor sponsored bloggers/brand ambassadors and take steps to halt continued publication of deceptive claims when discovered



Points to Remember

- Consumers need to know when they're being pitched a product – advertising must be identified as advertising
- Unexpected material connections should be disclosed
- Policy and training will be essential – and make sure message reaches agencies/p.r. firms used
- Both advertisers and consumer endorsers being sponsored by the advertiser are potentially liable, but FTC enforcement will focus on advertisers



Thank You!

- For more information, visit www.ftc.gov
- Send questions to endorsements@ftc.gov