

The Power of Direct:
Relevance. Responsibility. Results.

DMA 
Direct Marketing Association

Email & Social Media Marketing Best Practices



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The Power of Direct: Relevance. Responsibility. Results



DMA Ethics and Compliance Update

- **New DMA Ethical Guidelines Changes**
 - Oct. 11
- **HIPPA – using health information responsibly**
 - November 8th
- **Other Upcoming topics**
 - COPPA – protecting children
 - Personal Information Collection and Use Reminders
 - Environmental best practices and DMA initiatives
 - Online Marketing: OBA and online advertising
 - Data Security – protecting information in your care

Session Outline

Testimonials/Endorsements

CAN-SPAM

DMA Guidelines on Social Media Marketing



Join the conversation on Twitter at #dmawebcast

Today's Speakers

Senny Boone

SVP, Corporate & Social Responsibility



Jerry Cerasale

SVP, Government Affairs



FTC Guides: Background



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What are the FTC's *Guides for Endorsements & Testimonials*?

- **Purpose of the *Guides*:**

- The Commission designed the *Guides Concerning the Use of Endorsements and Testimonials in Advertising* to assist businesses in conforming their endorsements and testimonial advertising practices to comply with Section 5 of the FTC Act.

- **History of the *Guides*:**

- The *Guides* have been in effect since the 1970s and have not changed since 1980.
- While not formal FTC rules, the *Guides* reflect the Commission's policy on the use of testimonials in advertising.

What are the FTC *Guides*? (continued)

- Scope of the *Guides*:
 - The *Guides* affect all testimonials delivered through all channels.
 - The revised *Guides* provide examples to illustrate the application of the *Guides* to new media.

When & Why Did the FTC Revise the *Guides*?

- **Revisions to *Guides*:**
 - The Commission released its revised *Guides* on October 5, 2009.
 - The new *Guides* are effective as of December 1, 2009.
- **Why:**
 - Consumer Complaints: weight loss, free to pay conversion
 - New Media “paid ads”
 - Blogs, reviews

Are the *FTC Guides* Legally Binding?

- Technically no
- Reflect FTC's views on the matters
- FTC may use in a Section 5 case



FTC Guides: Deep Dive



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Typical Results: What Are the New Rules for Disclaimers?

- **“Results Not Typical”**
 - Prior to the revision, the *Guides* provided a "safe harbor" that allowed advertisers to use testimonials that reported specific successful experiences with an advertised product or service as long as the advertiser included a disclaimer such as "Results not typical."

- **“Generally Expected Results”**
 - Under the revised *Guides*, advertisements that feature a consumer and convey his or her experience with a product or service as typical when that is not the case will be required to clearly disclose the results that consumers can generally expect in the depicted circumstances.

Material Connections & Endorsers

- **What is a material connection?**
- **What constitutes an endorser under the new Guides?**
- **What are the rules for celebrity endorsers?**

Impact of *Guides* on New Media Channels

(blogs, message boards, and street teams)

- Both advertisers and endorsers are potentially liable for statements disseminated through new media channels;
- The endorser is responsible for disclosing a material connections with an advertiser;
- Advertisers have a responsibility to advise endorsers of their disclosure obligations; and
- Advertisers should monitor an endorser's statements to ensure they comply with the *Guides* and take corrective actions if they are not.

Concerns with Application of the *Guides to New Media*

- The revised *Guides* impose liability on advertisers for the actions of third parties over whom they exercise uncertain control.
- The revised *Guides* impose liability for false or unsubstantiated statements made through a blogger's endorsements.



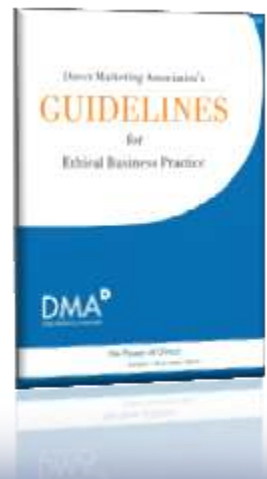
New DMA Guidelines for Testimonials/Endorsements

- Consistent with new FTC *Guides*.
- Approved by DMA Board in January 2010.
- Review the Guidelines at www.dmaresponsibility.org/Guidelines/



New DMA Guidelines for Testimonials/Endorsements

- **Via social media channels**
 - social networking sites, online message boards, blogging, word of mouth etc.
- **Authorized, accurate and genuine**
- **Not out of context**
- **Must disclose any “material connections” between endorser and marketer**



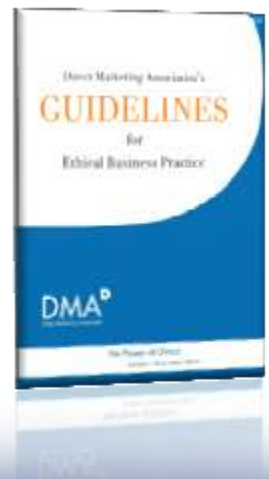
New DMA Guidelines for Testimonials/Endorsements

- **“material connection”**
- **Clear disclosure “typical,” or generally expected—not above average results**
- **Prior and adequate substantiation for claims about what the product will actually do**
- **Bona fide user proof**



New DMA Guidelines for Testimonials/Endorsements

Celebrities also must disclose relationships with marketers and not knowingly make false statements.



CAN-SPAM



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CAN-SPAM

- **The industry is very familiar with do's & don'ts but newer channel uses require your attention and "homework"**
- **CAN-SPAM:**
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003
- **Both FTC & FCC have regulations**



CAN-SPAM

- Law covers “commercial” messages
Any electronic email message, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.
- Each violation is \$16,000 by the FTC



CAN-SPAM

Compliance requirements:

No false, misleading header information

No deceptive subject line

CAN-SPAM

Identify the message as an ad

Tell the recipient where you are located-use a physical address!

CAN-SPAM

Tell recipients how to opt-out of receiving future emails

Honor the opt-out request “promptly” which is within 10 business days.

Monitor your third parties – both the marketer and the sender may be held liable



CAN-SPAM

Exceptions:

- Charities (but states have authority)**
- Transactions**
- Relationship content**

If mixed content (commercial & other) err on the side of caution and comply!

CAN-SPAM

- **If multiple marketers**
You can designate one as the sender who is held accountable or all will be liable.
- **Forward to a friend**

CAN-SPAM

DMA Guidelines:

More...

- Use identification and authentication protocols
- An opt-out request means no sharing of the email and the opt-out should allow a consumer to opt-out of third party sharing



CAN-SPAM

- Use DMA's E-MPS list on your prospect campaigns.
- One final note—FCC rules do not allow the sending of unsolicited commercial messages to wireless devices – mobile marketing is impacted, must obtain **PRIOR EXPRESS CONSENT**



Social Media Marketing



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New DMA Social Media Marketing Guidelines

- **Ethics Policy Committee initiative**
- **Member guidelines cover social media marketing that involve user interactions often greater than interactions in other channels.**
- **To ponder--more privacy or less privacy expectations within the social media platform? To share or not to share?**



New DMA Social Media Marketing Guidelines

- **MORE THAN JUST EMAIL ADDRESS**
- **Definitions of commercial solicitations “on-line,” to include both emails and an individual’s direct contact point (user id, or other unique identifier)**
- **Marketers can collect and aggregate such data**
- **Integration of channel appropriate consent- what about the in-house email suppression file? CAN-SPAM implications.**



New DMA Social Media Marketing Guidelines:

Key question:

Is the social communication an unsolicited commercial offer?

- **Provide choices to participants within a solicitation consistent with existing DMA Guidelines.**
- **Example: Allow participants to request no third party transfers of their “direct contact point” information for future solicitation purposes.**
- **Theme: Trust & Authenticity**



New DMA Social Media Marketing Guidelines:

- **Social Media and Also On-line Referral Marketing--**

User takes action upon request by marketer:

- forward marketing piece to a friend
- provide personally identifiable information to the marketer
- share, display or engage with the social media network or channel

PAID? Any commercial benefit to the user? To the friend?



New DMA Social Media Marketing Guidelines:

CHOICES

- **Personally identifiable information use-marketer should first disclose to the individual the intended uses of the information.**
- **Marketer should offer the appropriate choice mechanisms in the first communication regarding receipt of future communications.**



New DMA Social Media Marketing Guidelines:

- **Marketers should not contact referred individuals who are on their in-house (mail, e-mail) suppression file**
- **Marketers should not sell, rent, transfer or exchange referred email address or other direct contact points without permission.**
- **Remember mobile—prior express consent for mobile marketing.**



New DMA Social Media Marketing Guidelines:



DATA

- If data is being collected as part of social media marketing practices via an OBA ad, refer to the OBA section of the Guidelines (Article 38.)
- Do not retain data except for a legitimate marketing purpose, and do not share the data with a third party without consent except if the individual has agreed to post or populate such information in an unrestricted publicly accessible location.



New DMA Social Media Marketing Guidelines:

PARENTAL PERMISSION

- Where marketing to children is permitted by law, ensure you are following COPPA
- Material should be suitable for a child taking into account the age, range, knowledge and sophistication and maturity of the intended audience.



New DMA Social Media Marketing Guidelines:

- **Operators of social media platforms:**
 - **Appropriate terms and conditions regarding user consent to use email addresses and other direct contact point information**
 - **Advise users on how to de-activate accounts.**



Questions & Resources

dmaresponsibility.org

dmaaction.org

Email Questions to

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jcerasale@the-dma.org

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Thank You!

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