



Don't Gamble with Promotions!

(Is your marketing promotion illegal?)

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**PRESENTED TO RALEIGH TRIANGLE ASSOCIATION
OF CORPORATE COUNSEL**

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MLG ABBREVIATED RULES

NO PURCHASE NECESSARY. VOID WHERE PROHIBITED.

You must be a resident of the United States and 18 years old or older to enter. Partners and employees of Morningstar Law Group are NOT eligible to enter or win.

To enter, submit your business card prior to the drawing.

One winner will be chosen by random drawing after this presentation.

You must be present to win.

Prize is a gift certificate to the Umstead Hotel & Spa (ARV: \$100)

Odds of winning depend on number of business cards received.

Sponsor: Morningstar Law Group

See Official Rules for details.

MLG OFFICIAL RULES

NO PURCHASE NECESSARY. OPEN TO ELIGIBLE U.S. RESIDENTS WHO ARE AT LEAST 18 YEARS OF AGE. VOID WHERE PROHIBITED OR RESTRICTED BY LAW.

1. How to Enter. Submit your business card before the end of this presentation.

2. Sponsor: The sponsor of this Promotion is Morningstar Law Group, 421 Fayetteville Street, Suite 530, Raleigh, NC 27601 ("Sponsor").

3. Eligibility: This Promotion is open only to U.S. residents who are at least eighteen (18) years old at the time of entry. Partners and employees of Sponsor are not eligible to enter or win the Promotion.

4. Prize and Odds: One \$100 Gift Card to The Umstead Hotel and Spa will be awarded. The winner will be randomly selected after the end of this presentation from all eligible entries received during this presentation. Winner must be present to win. Expiration date, service fees and restrictions may apply to the Gift Card. Prize is non-transferable and no substitution will be made except as provided herein at the Sponsor's sole discretion. The number of eligible entries received during the Promotion Period will determine the odds of winning the prize. Sponsor reserves the right to substitute the prize for one of equal or greater value if the designated prize should become unavailable for any reason. Winner is responsible for all taxes and fees associated with prize receipt and/or use of the prize.

5. Release: By entering this Promotion, entrants agree to release and hold harmless Sponsor, and its prize suppliers, and each of such company's officers, directors, employees and agents (collectively, the "Released Parties") from and against any claim or cause of action, including, but not limited to, personal injury, death, or damage to or loss of property, arising out of participation in this Promotion or receipt or use or misuse of any prize.

6. Publicity: Except where prohibited, participation in the Promotion constitutes winner's consent to Sponsor's and its agents' use of winner's name, likeness, photograph, voice, opinions and/or hometown and state for promotional purposes in any media, worldwide, without further payment or consideration.

7. General Conditions: Sponsor reserves the right to cancel, suspend and/or modify the Promotion, or any part of it, if any fraud, technical failures or any other factor beyond Sponsor's reasonable control impairs the integrity or proper functioning of the Promotion, as determined by Sponsor in its sole discretion. Sponsor reserves the right, in its sole discretion, to disqualify any individual it finds to be tampering with the entry process or the operation of the Promotion or to be acting in violation of these Official Rules or any other promotion or in an unsportsmanlike or disruptive manner.

8. Limitations of Liability: The Released Parties are not responsible for: (1) any incorrect or inaccurate information, whether caused by entrants, printing errors or by any of the equipment or programming associated with or utilized in the Promotion; (2) unauthorized human intervention in any part of the entry process or the Promotion; (3) technical or human error which may occur in the administration of the Promotion or the processing of entries; or (4) any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from entrant's participation in the Promotion or receipt or use or misuse of any prize.

9. Disputes: Except where prohibited, entrant agrees that: (1) any and all disputes, claims and causes of action arising out of or connected with this Promotion or any prize awarded shall be resolved individually, without resort to any form of class action, and exclusively by the United States District Court for the Eastern District of North Carolina or the appropriate North Carolina State Court located in Wake County, North Carolina; (2) any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Promotion, but in no event attorneys' fees; and (3) under no circumstances will entrant be permitted to obtain awards for, and entrant hereby waives all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the entrant and Sponsor in connection with the Promotion, shall be governed by, and construed in accordance with, the laws of the State of North Carolina without giving effect to any choice of law or conflict of law rules (whether of the State of North Carolina or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of North Carolina.

10. Winner List: Winner List requests will only be accepted after the promotion end date (listed above) and no later than December 31, 2017. For the Winner List, send an email with subject line: "Gift Card Drawing" to Morningstar Law Group, 421 Fayetteville Street, Suite 530, Raleigh, NC 27601.

Types of Prize Promotions

Lottery – Illegal under federal and state law, unless you are the state offering a state sanctioned lottery, or a charitable organization offering a raffle that complies with state law.

Sweepstakes – Also called “Games of Chance” – generally legal, but every state’s laws have different requirements.

Giveaways – Legal but subject to general prohibitions against misleading advertising.

Contests – Generally legal, but state laws vary.

Raffle – Only for charitable organizations; restricted by state law.

Gambling – Defined by state law, generally betting something of value on the outcome of an event determined by chance.

Regulators to Worry About

FTC – consumer protection

FCC – where texting and phones are involved in entries or advertising

US Postal Service – Where promotion materials are mailed

State Attorneys General – enforcing consumer protection, lottery and gambling statutes

Sweepstakes 101

Lottery = Prize + Chance + Consideration

A **sweepstakes** is a promotion where consumers are offered the **chance** to win a **prize** through a chance determination (random drawing, scratch off card) **without purchase or other consideration**, often in connection with the sale of consumer goods or services.

RISK: If the promotion includes consideration (purchase, payment or substantial effort) AND chance AND prize, then it is likely an **ILLEGAL LOTTERY or GAMBLING**.

NC General Statutes §§ 14-289 – 14-309.20



Consideration Issues

AMOE – Whenever you have a paid entry method, you **MUST** have an alternate free method of entry (can be by mail in, toll free call or online).

“Equal Dignity” -- If purchase based entries are unlimited, free entries must be unlimited (but you can limit to one free entry per outer envelope for mail-in).

Trade Shows and Fairs: If there is a fee to enter a trade show or a fair, you cannot advertise a sweepstakes outside the trade show/fair unless you will allow consumers to enter for free without attending the trade show/fair.

Iron Man Lottery



Just because you've never had a problem before...

From 1983 -2015, World Triathlon Corp. charged fees up to \$50 for a chance to enter its Iron Man competitions.

The company would randomly select entries for spots in the Iron Man competition.

No refund if your entry wasn't chosen and no credit toward registration for those who were chosen.

Every year, approximately 86,000 people applied for 2,000 spots, and the Company pocketed the profits.

On top of that, the Company took in more money by selling "membership" in the Passport Club, which let athletes "double their chances of winning the lottery" for another \$50.

What happened?

In May 2015, World Triathlon Corp. forfeited \$2.8 Million (profits since 2012) to avoid criminal charges.




DEAL OR NO DEAL

**TEXT CASE
NUMBER TO
59595**

**TO WIN
\$10,000**

\$1.99 per text msg, plus standard text messaging charges.
Go to www.NBC.com/DOND to enter for free and for official rules.
Only correct guesses will be entered. Entrants must be 18 or older and a legal resident of the 48 continental U.S. or DC (excluding Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands). You may enter up to 10 times per show, but only correct guesses will be entered. No purchase necessary. Void where prohibited. Sweepstakes begins December 4, 2006 and ends June 30, 2007



NO Premium Text Fees

Deal or No Deal, The Apprentice, American Idol, and America's Got Talent all offered Text to Win Sweepstakes.

They charged premium text messaging fees, but gave no “value” for the fee.

Even though there was an online AMOE, the argument was that the sponsors unlawfully charged for entries.

Settled in 2011, refunding all premium fees to non-winners and promising not to use premium fees for 5 years.

Sweepstakes Compliance

Legal Review of advertising and Official Rules

Registration and Bonding in NY and Florida if total prize value over \$5,000

Registration in RI if offered in retail stores and prizes over \$500

Retention of winners lists for at least 6 months

Provide winners lists for registered promotions to FL within 60 days after winners finally determined



Rules Requirements

Abbreviated rules should include:

- NO PURCHASE NECESSARY TO ENTER OR WIN.
- List of eligible states and “Void where prohibited.”
- Eligibility requirements – Age, residency, not employee of Sponsor, etc.
- See official rules for details (and link to or reference to where to find rules).
- Statement of odds (can be “Odds of winning depend on number of eligible entries received”).
- If prizes are mentioned, the number and retail value of each prize.
- Sponsor identification.

Rules Requirements

Complete Official Rules should also include:

- Details about how to enter (including free entry);
- Disclaimers and releases of liability for Sponsor;
- Winner affidavit and release for prizes over \$600;
- Details about how and when winners will be selected and forfeiture if winner does not respond;
- Details about prizes and prize values (see special disclosures below);
- Advertising consent (except in TN and where prohibited); and
- Winners list details.



The “Kraft Clause”

Thanks to Kraft, which botched a 1989 instant win game, when a printing error resulted in 10,000 grand prize winners... and litigation to follow...

“If due to a printing, production or other error, more prizes are claimed than are intended to be awarded for any prize level, the intended prizes will be awarded in a random drawing from among all verified and validated prize claims received for that prize level. In no event will more than the stated number of prizes be awarded.”

How to ~~Cheat and~~ Win \$20 Million



New Rules!

Limit the number of prizes.

Limit the number of prizes a single person or household can win.

The Nuclear Option: “Sponsor reserves the right to cancel, suspend and/or modify the Promotion, or any part of it, if any fraud, technical failures or any other factor beyond Sponsor’s reasonable control impairs the integrity or proper functioning of the Promotion, as determined by Sponsor in its sole discretion. Sponsor reserves the right, in its sole discretion, to disqualify any individual it finds to be tampering with the entry process or the operation of the Promotion or to be acting in violation of these Official Rules or any other promotion or in an unsportsmanlike or disruptive manner.”

The New Winners



Christian Methot – Canadian programmer who developed a Bot To enter Sweepstakes – won over \$160,000 in prizes

The New Winners



Hunter Scott Blog Post: How I won 4 Twitter Contests a day
(every day for 9 months straight)

No Bots Clause

“Use of any automated system to participate is prohibited and will result in disqualification.”

And another favorite:

“Any attempt by any entrant to obtain more than the stated number of entries by using multiple/different email addresses, identities, registrations and logins, or any other methods will void that entrant's entries and that entrant may be disqualified.”

1610



PUBLISHERS
CLEARING
HOUSE

2208

October 31, 2010

YOUR NAME HERE
Ten Million Dollars

\$10,000,000,000

Congratulations

Ed McMahon

“You May Be a Winner...”

Publishers Clearing House ruined it for everyone

- Many states have prize notification statutes that require written notices before telling anyone they may have won or have won a prize
- Very detailed requirements about disclosures, size of fonts, using Arabic numerals for number of prizes and prize values
- Clear and conspicuous disclosure of the number of prizes, prize values and odds of winning where prizes are mentioned in advertising
- NC General Statute § 75-33

Sweepstakes Compliance Review

- ❑ No consideration/AMOE
- ❑ Full and abbreviated rules that cover all bases
- ❑ Registration and bonding where required
- ❑ Advertising compliance (prize notification statutes)
- ❑ Follow up – fulfillment and reporting winners list to FL if applicable

Giveaways 101

Promotion where the sponsor gives the same prize to everyone on the same conditions, so there is no chance involved.

First 50 people to enter the store on Black Friday will receive a \$10 gift card.

Free baseball caps on Fan Day at the DBAP while supplies last.

Avoid chance and follow advertising rules – disclose all material conditions and restrictions clearly and conspicuously in all advertising.

When is a Giveaway not a Giveaway?

When it's a sweepstakes.

If everyone gets the same prize on the same terms (e.g., everyone gets a baseball cap), there is no CHANCE, so the promotion is a giveaway, not a sweepstakes.

BUT:

If consumers get different prizes, with different values (e.g. fishing in a pond for prizes), then it is a SWEEPSTAKES because chance determines the prize value.

SO: All sweepstakes requirements apply.

Let it Snow!

Buy furniture from the retailer on January 8, 9 and 10

If it snows more than 3 inches at Chicago's O'Hare airport on Super Bowl Sunday, you get a FULL REFUND (including sales tax and delivery fees) of your furniture purchase.

In 2015, the retailer refunded over \$2 million to nearly 3,000 shoppers – complete with refund parties.



A Note About Agencies

Even if an advertising or marketing agency recommends a particular promotion, and even if they say the promotion is legal, **your company** as the Sponsor must perform its own legal review. If the promotion does not comply with applicable state or federal laws, it is the Sponsor that will be liable, not the advertising or marketing agency that recommended it. Best to get legal review at the concept stage to avoid problems.

CONTESTS



Bluebird Hill Farm, Bennett, NC
www.essaybluebirdhillfarm.com

Contests 101

Removes chance in order to avoid an illegal lottery.

Winner determined by skill and not chance (e.g., essay contest, photo contest).

Objective judging criteria disclosed in rules (e.g., For essay contest, 50% creativity, 25% supports contest them, 25% writing skill).

Qualified (or at least objective) judges.

Tie breaker determined by skill, not chance.

Consideration can be a problem – need to check individual state laws (CO, MD, NE, ND) and AG opinions.

Contest Judging

Judges must be qualified and identified in rules;

Judges must apply the objective criteria described in the rules;

Judges decisions are documented and final; and

Judges must follow tie-breaker rules and alternate winner rules described in contest rules.



Special Contest Issues

Copyright issues in essay, video and photo contests:

- Essay must be original and written by entrant;
- Entrant must be the photographer/videographer or have permission from the photographer/videographer to use the photo in the contest and grant rights in the photo to the Sponsor

Exclusions – For photo and video contests, prohibit certain content, including other manufacturers' brands, obscene content, infringing content, music, etc.

Rights – Obtain a license to use the winning submission, in all forms, for marketing purposes.

DMCA Copyright Agent for User Generated Content

Follow Your Own Rules

2014 Gillette Photo Contest – Living Life to the Fullest – Whatever the Weather #WhateverWeather

Winning Photograph was not taken by the entrant, contained a copyright watermark of the photographer, and the person shown in the photo was not the entrant.

A few weeks later, Gillette announced a new winner, but not until after the photographer (whose sister was shown in the photo) commented on Gillette's Facebook page that the photo was used without her permission.



When is a Contest not a Contest?

When it's a sweepstakes.

Mix 101.5 Christmas Choir Competition

The public at large are not “qualified judges” for purposes of a contest, and in “any chance” states, public voting introduces chance into the promotion.



Best practice: If the promotion includes ANY chance elements, treat it like a sweepstakes, with rules, registration (where required), and NO CONSIDERATION.

Contest Compliance Review

- ❑ Skill based – no chance involved in determining winners
- ❑ Qualified judges
- ❑ Judging Criteria
- ❑ Consideration issues in some states
- ❑ Vet and secure IP and publicity rights

Raffles 101

May be conducted **ONLY** by charitable organizations.

The United Way raffle you run in your office is **illegal** if your company is not a charitable organization.

Must comply with applicable law (varies by state, so multi-state raffles can get complicated).

Raffles 101

NC General Statute § 14-309.15:

- Limit 2 Raffles per organization per year
- Max prize value of \$125,000 per raffle and per year, except real property prizes for which the maximum is \$500,000 per raffle and per year
- 90% of proceeds must be used for charitable, religious, educational, civic or other nonprofit purposes



www.nameaprilscalf.com

Giraffe Naming Contest

- \$1.00 per vote, 5 votes minimum
- Vote as many times as you like
- Funds raised will be split:
 - 1) Giraffe Conservation Efforts in the wild through the Giraffe Conservation Foundation.
 - 2) Ava's Little Heroes -- An event named after the daughter of the park owners, who suffers from a rare form of epilepsy. The funds generated for this annual campaign support local families and their children experiencing unexpected medical journeys and expenses.
 - 3) Animal Adventure -- The park will continue to improve the animal and guest experiences at the park with further improvements and projects - helping further our message and mission of education.

Social Media Guidelines

In addition to FTC guidelines, each social media site has its own guidelines

Guidelines for sites vary, but Facebook, Twitter, Instagram and Pinterest all require sponsors to post rules that include:

- Acknowledgement that promotion is not sponsored, endorsed or administered by, or associated with the social media site; and
- A release by the entrant of the social media site

The guidelines also require disclosure of advertisements, sponsorships and endorsements



Social Media Platform Guidelines

Facebook: https://www.facebook.com/page_guidelines.php

Twitter: <https://support.twitter.com/articles/68877-guidelines-for-promotions-on-twitter>

Instagram: <https://help.instagram.com/179379842258600>

Pinterest: <https://business.pinterest.com/en-gb/brand-guidelines>

Facebook Concerns

Page owners can not offer “like-gate” promotions or otherwise require a consumer to like a page to gain access to content via Facebook.

Similarly, “liking” a post and sharing a post cannot be used as a method for a sweepstakes entry. Facebook also bans tagging a friend as part of a sweepstakes entry.

You CAN ask entrants to comment on a post or upload photos to enter.

You CAN ask consumers to “like” your Facebook Page without offering incentive to do so.



Pinterest Concerns

Do NOT require users to pin a specific item.

Do NOT allow more than one entry per person.

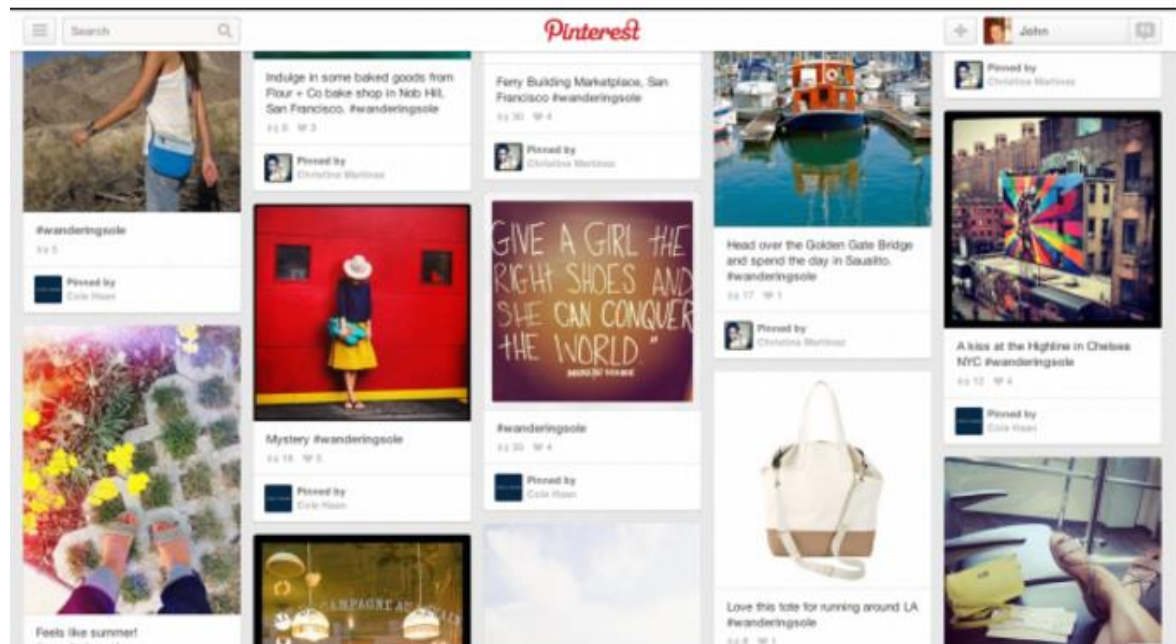
You CAN ask entrants to pin their favorite item from a selection in order to enter.

You CAN ask entrants to pin more than one item, as long as you give only one entry per person.



Cole Haan and the 2014 Wandering Soles Contest

win a \$1,000 shopping spree from [@colehaan](#) ! share where your sole's are going to wander – <http://t.co/m4cK5RCcDM>
– Jennifer Chong (@jchongstudio) [May 26, 2013](#)



Twitter #Ad

Can use tiny URL to house promotion rules and other details (due to space limitations)

If sweepstakes entries are offered for “retweeting” a positive message about the product, connection should be disclosed in body of tweet with hash tags such as “#SPONSOR/AD/PAID/SWEEPSTAKES

Tweets that contain a product endorsement or review trigger disclosure guidelines under FTC’s Testimonial and Endorsement guidelines. #Ad or #Paid Ad



Text Promotions

When consumers are asked to text the Sponsor to receive a code to receive a giveaway item, the Sponsor must follow all texting requirements:

- do not keep the consumers' text information for use with future marketing efforts above and beyond the sweepstakes entry or giveaway code retrieval
- Text message promotions must comply with the FCC's Telephone Consumer Protection Act ("TCPA") and with the FTC's CAN-SPAM Act. Both laws prohibit sending unsolicited text messages to a wireless device and require notice to the consumer of the amount to be charged and consent to receive the text messages.

Text Promotions – cont.

- Consent to receive text messages in connection with a sweepstakes may NOT be treated as consent to receive other promotional messages or information.
- TCPA allows companies to respond to consumer- initiated text messages (e.g., text “discount” to shortcode to receive a coupon; text “giveaway” at State Fair to receive code for a free item at the booth) without liability, holding that these are “fulfillment messages, not telemarketing.”

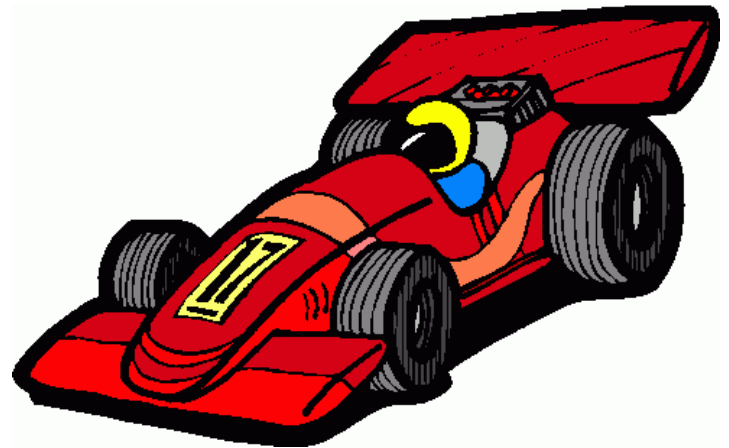
Problematic Prizes

Event Tickets

- “This ticket may not be used for advertising, promotion or other trade purposes without the written consent of issuer.”
- *NCAA vs. Coors* settlement in 2003 left many questions unanswered.
- Don’t forget the trademark issues – “the final 3 games of the tournament run annually in March and April.”

Problematic Prizes

- Trips – Flights, hotels, releases, exclusions
- Cars – Licensed driver, insurance
- One-of-a-Kind prizes



Taxes

Issue a 1099 for any prize over \$600

Add cash to high value prizes to help the winner pay the taxes



Endorsements

Becoming a big issue in Social Media but applies to all endorsements


Endorsers and “Influencers” must disclose their relationship to seller and whether they were paid or given free products


See FTC Endorsement Guidelines and publications


https://www.ftc.gov/system/files/documents/plain-language/pdf-0205-endorsement-guides-faqs_0.pdf


Lord & Taylor





 **caraloren** Follow
5 days ago
So excited to be dressing for spring in this dress from @lordandtaylor's new #DesignLab collection!!


 **mariaisabelcastaneda**, **alinalexandra9.9**, **nazgulnazek** and 13.2k others like this.



 @wp Peyton4


 **naturalindsay**
Love your hair!!


 **tay7tay**
@morgan_kelly



 **brunisms**
@bsouzz hav you seen this dress everywhere on Instagram lately?

 **bsouzz**
@brunisms not really lol, where else?

 **mathewsblog**
#ad ? 

 **eugeniesblog**
This dress is amazing 😊

 **jadeshia**
@bsthom

Lord & Taylor

Lord & Taylor paid 50 online fashion “influencers” to post Instagram pictures of themselves wearing the same Lord & Taylor dress, but failed to disclose they had given each influencer the dress, as well as thousands of dollars, in exchange for their endorsement. The Company also placed a paid article in *Nylon* magazine, although the article did not disclose that it was paid advertising.

Lord & Taylor settled FTC charges that it deceived consumers. As part of the settlement Lord & Taylor is required to ensure that its influencers clearly disclose that they have been paid for endorsements, and Lord & Taylor is prohibited from misrepresenting that paid ads are from an independent source.

No Implied Endorsements Using Unauthorized Images

 **Duane Reade** 
@DuaneReade Follow

Love a quick #DuaneReade run? Even @KatieHeigl can't resist shopping #NYC's favorite drugstore bit.ly/1gLHctI
pic.twitter.com/uGTc3k1Mii

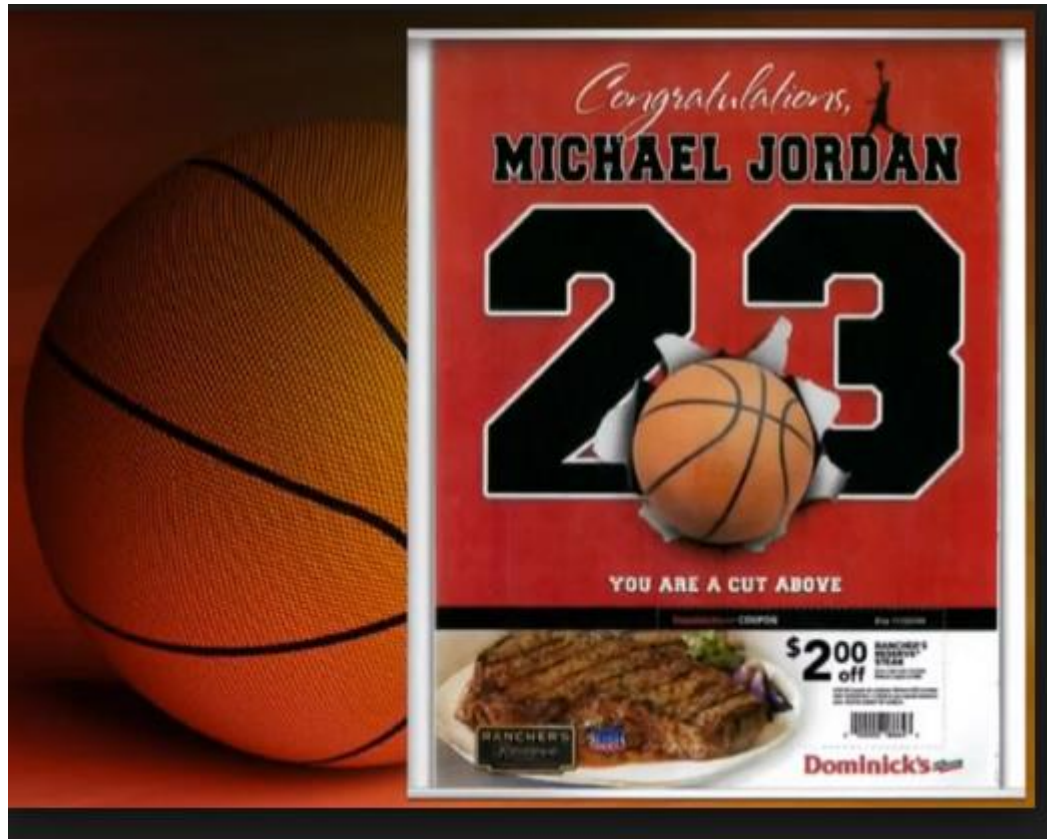
 Reply  Retweet  Favorite  More



RETWEETS 86 FAVORITES 202 

1:47 PM - 18 Mar 2014 Flag media

Or A Celebrity's Name and Jersey Number...



Native Advertising

Predicted to be where promotions are moving

Native advertising is the use of online paid advertising content presented in a form that matches the context of the user experience in which it is placed (e.g., in-feed content/sponsored posts, search content, custom content, recommended content, endorsements, promoted listings and standard ad positions)

This is an area that regulators are watching closely

Better Business Bureau (BBB), American Society of Magazine Editors (ASME), Federal Trade Commission (FTC) and the United States Postal Service have issued guidelines pertaining to native advertising and endorsements

Example of Native Advertising in Online News Article

The screenshot shows the top navigation bar of The Atlantic website with categories: POLITICS, BUSINESS, TECH, ENTERTAINMENT, HEALTH, EDUCATION, SEXES, NATIONAL, GLOBAL, VIDEO, and MAGAZINE. A red arrow points to a yellow 'SPONSOR CONTENT' button. Below this is the advertisement for 'POWER IN DATA: Turning Facts Into Discoveries', presented by IBM. The ad features a line graph and the text 'As Big Data Grows, a New Role Emerges: the Chief Data Officer'. Below the headline is a sub-headline: 'Adding this new position to the C-Suite will help companies utilize Big Data to gain a competitive advantage.' and a byline: 'David Lavery, Vice President Marketing, Big Data and Analytics, IBM | Mar 17, 2014'. Social sharing buttons for Facebook, Twitter, LinkedIn, and Google+ are visible. Below the article is a large image of a person's face overlaid on a background of data charts and graphs. To the right of the article is a 'Now Live' chat box for 'Innovator Chat: Improving the Customer Experience with Big Data' featuring Inhi Cho Suh, Vice President of Big Data for IBM. Below the chat box is a section titled 'BIG DATA AND THE CUSTOMER EXPERIENCE REVOLUTION' with icons representing data and customer experience.

Native Advertising – the basics

The majority of the guidelines can be summed up in a few points:

- Don't deceive the reader
- Advertisements that mimic the look and feel of the print or digital publication in which they appear may deceive readers and should be avoided
- FTC recommends that editorial-like advertisements (whether in print or digital) use “Advertisement”, “Advertising”, “Special Advertising Section”, “Sponsor Content” or “Paid Post”
- Native advertising should be visually distinguished from the rest of the print or digital page

QUESTIONS?





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