

Santa Clara University

FTC Regulation of Social Media

Prof. Eric Goldman

Director, High Tech Law Institute

<http://www.ericgoldman.org> • <http://hightechlaw.scu.edu>

egoldman@gmail.com

Context Setting

- **Out of scope**
 - Off-label marketing
 - FDA/FTC regulatory interface
 - Substantiation requirements
- **Presumptions**
 - FTC pays heightened attention to “health and safety” claims
 - FTC likes busting bad guys and market leaders

FTC Wish List

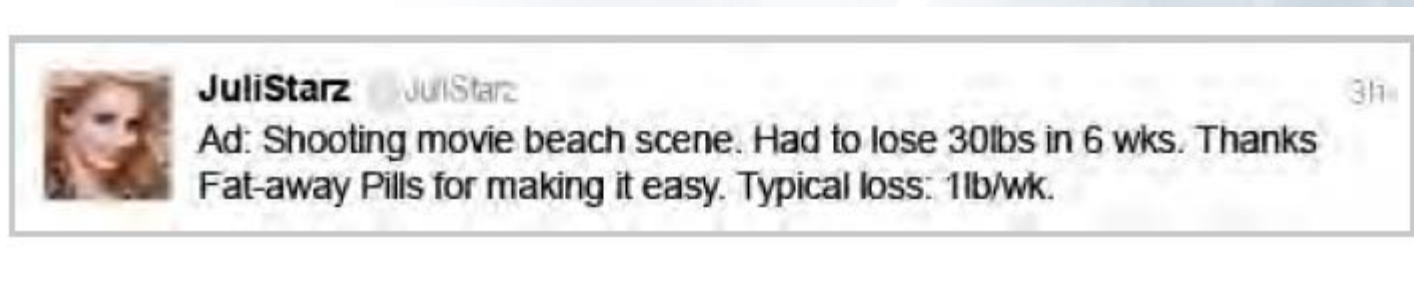
- No undisclosed ads/astroturfing. Ex: Reverb Communications (Aug. 2010)
- “Clear and conspicuous” disclosures
- Blogger disclosure and monitoring
- Affiliate monitoring

Clear/Conspicuous Disclosure

- “Simply making the disclosure available somewhere in the ad, where some consumers might find it, does not meet the clear and conspicuous standard”
- Disclosure should be visible on all technology platforms
 - Scrolling and pop-ups disfavored
 - “Keep abreast of empirical research about where consumers do and do not look on a screen”
- Bake limits into claims, not in separate disclosures
- Hyperlinks need clear call-to-action
 - Probably insufficient: “disclaimer,” “more information,” “details,” “terms and conditions,” “fine print”

Clear/Conspicuous Disclosure

- “Ad:” at tweet beginning discloses an ad
- Disclosure in sequential tweets don’t work
- “if a particular platform does not provide an opportunity to make clear and conspicuous disclosures, then that platform should not be used to disseminate advertisements that require disclosures”



Spurring Social Media Dialogue

- What is an ad?
 - FTC Endorsement/Testimonial Guidelines: “an endorsement means any advertising message...that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser”
- The FTC expects advertisers to
 - Require bloggers to disclose consideration
 - Ann Taylor/Nordstrom: gifts for attending event
 - Hyundai: gift certificate for linking to Super Bowl ad
 - Monitor bloggers for compliance
 - Legacy Learning: affiliates wrote fake reviews without adequately disclosing affiliate status

Master Bath - A Splash of Color

by Katie on May 7, 2012

This was my week to tackle the master bathroom. As you've seen from the "before" photos, it's tiny and very 1950s. I decided to paint the walls canary yellow to brighten the room, but it was very difficult finding the right shade of yellow. I tried eight different swatches on the wall. Some were clearly too pale and some were alarmingly gold! I finally ended up using [PaintWorld's Just One Coat in Canary Sunrise](#). This paint is amazing. It required no primer and went on smoothly and easily. Believe it or not, one coat provided perfect coverage. I added a shower curtain that I made from a terrific tropical flower print on sale for \$4.99/yard from the [Discount Fabric Factory](#), and replaced the old sink fixtures with new ultra-modern white ones from [HardwareHideout.com](#). In no time at all, my master bathroom was canary yellow, fresh, and fabulous. I plan to use Just One Coat when I paint the gift-wrapping nook in my craft room next week. By the way, PaintWorld gave me the paint to try out, but it's so terrific I'll buy it myself this time.



About Us

Hi! I'm Katie Krafty and this is my blog. I live with my husband, Harry, and our son, Grayson. Two years ago, we bought a fixer-upper here in Pittsburgh and we've been fixing it up ever since! Thanks for joining us on our home-making adventures!

[Read more about the Kraftys.](#)



Recent Posts

- [Master Bath - A Splash of Color](#)
May 7, 2012
- [Spring for Window Boxes!](#)
May 1, 2012
- [Mood Boards for Rainy Days](#)
April 22, 2012
- [Laundry Room Makeover](#)
April 19, 2012
- [DIY coffee table](#)
April 15, 2012