New Rules of Digital Marketing
Avoiding the Legal & Regulatory Pitfalls
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New Rules of Digital Marketing

- Social Media Safeguards for Brands & Retailers
- Dos & Don’ts of Using Online Ratings & Reviews in Advertising
- Ins & Outs of Location-Based Mobile Marketing Programs
- Security & Privacy Issues in Wearable Tech Design
Primary Legal Risks of Social Media

• Content often contains third party materials protected by (1) copyright, (2) trademark, and (3) publicity laws. Federal and state laws apply and risks depend a lot on:
  – Whether you induce the problematic content.
  – How you use the third party content.
  – Whether you monitor and respond to complaints.

• Endorsement disclosure obligations increasing.

• Social media platform rules change frequently.
Social Media: Use of Celebrities

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

Katherine Heigl Signs with WME After Leaving Creative Artists Agency

Katherine Heigl steps out with her mom Nancy to do some shopping at Duane Reade on Sunday afternoon (March 16) in New York City.

It was just announced that the 35-year-old actress has split with CAA and signed with WME agency, aka William Morris Endeavor, The Wrap reports.

Katherine’s next project is the television pilot State of Affairs, set for NBC.

The drama is about a CIA officer plucked from the field to become the president’s daily brief, assuming responsibility for targeting America’s most critical threats while navigating the unique lifestyle that comes with such a high-powered job.

FYI: Katherine is wearing a Spratters &
Social Media: Use of Celebrities

Hey @Pharrell, can we have our hat back? #GRAMMYs

Pharrell's Hat
@Pharrellhat

i win #GRAMMYs

Arby's
@Arbys

8:28 PM - 26 Jan 2014

84,738 RETWEETS 32,853 FAVORITES
The Ironman Settlement

*U.S. v. World Triathlon Corp.* (May 2015)

- Illegal lottery alleged: Since 1989, participants paid $35-$50 for a chance to win the opportunity to compete in the Kona, Hawaii race.
- Competitors randomly selected and had to pay $850 for spot if won lottery.
- “Prize” is chance to complete a 2.4-mile swim, a 112-mile bicycle race, and a marathon in less than eighteen hours.
- Forfeited $2.7 million in fees to the Department of Justice.
Social Media Apps

- Be aware of mobile app platform Terms of Use.
- Many prohibit advertising and automated messaging.
- “Permissible” uses for brands:
  - Customer service
  - Content sharing
  - Contests and games
Online Customer Reviews & Ratings

• Content Liability Risks
  – Brand adopts statements that consumers are encouraged to post as their own. User posts may become regulated commercial messages.
  – Commercial messages must be truthful, not misleading, and require substantiation.

• High Risk in Using Reviews to Support Claims
  – Euro-Pro Operating, LLC, Shark-brand Vacuum Cleaners, NAD Case Reports #5717 (May 29, 2014).
More 5-star online reviews than any other vacuum brand*

Equal to or better than a Dyson, GREAT for pets!

⭐⭐⭐⭐⭐ by sgfernandez

I purchased the Shark Navigator Lift-Away PRO today (at Walmart) after seeing it on an infomercial and reading all 1 reviews, and I just have to say that it is the BEST vacuum I have ever used!! I live in an apartment and have 3 long-hv that shed a LOT! This vacuum EFFORTLESSLY picked up ALL of the cat hair from the carpet!!! I have NEVER had suc vacuum before like this, and I thought I was going to have to live life in a gross, hairy environment since my cats are constantly cheddng. My old vacuum, which was a Euroka cost almost the same amount as this vacuum when I bou

Was this review helpful?  Yes (185)  No (41)

great vacuum

⭐⭐⭐⭐⭐ by reddragon45

I love this shark professional navigator liftaway. I have had vacuums in the past but this one is great. I have had mine month now and it never loses suction, and it great lift away is nice to have as I have stairs and also its not heavy like vacuums. Also I love that it brings my carpet up nice and fluffy. I would recommend this to all my friends.
Paid “Expert” Endorsers Are Very Risky

FTC settlement with ADT sounds alarm about deceptive use of paid endorsers

By Lesley Fair
March 6, 2014 - 12:16pm

Consumers who tuned in to programs like the Today Show, Daybreak USA, and local newscasts may have caught interviews with guests billed as “The Safety Mom,” a home security expert, or a tech expert. Among the products they reviewed was ADT’s Pulse Home Monitoring System. Describing it as “amazing” or “incredible,” they offered glowing details about its capabilities, safety benefits, and cost. But according to the FTC, here’s one material fact that wasn’t discussed: ADT had paid the three spokespersons a total of more than $300,000 and provided two of them with free systems valued at $4,000 (not to mention free monthly monitoring) to tout the ADT Pulse Home Monitoring System. If you’ve been keeping your finger on the pulse of issues the FTC has been monitoring, high on that list are reviews that falsely represent the endorser to be an impartial expert. A lawsuit just settled by the FTC charges ADT with deceptive advertising for the misleading use of paid endorsers.

One appearance cited in the FTC’s complaint was a Today Show spot featuring guest Alison Rhodes, whom host Kathie Lee Gifford described as “a national family and safety expert known as The Safety Mom.” (You can watch the video clip from the FTC’s announcement.) The interview centered around tech products for “keeping your kids safe when you’re not around,” including ADT’s Pulse.
FTC Expands Enforcement to Agencies

FTC Calls Out Sony -- and Deutsch LA -- for Deceptive Advertising

First Time FTC Has Charged An Agency Or Company Regarding Twitter Behavior

By Maureen Morrison, Published on November 25, 2014.

The Federal Trade Commission doesn't think that Sony's claims that its PlayStation Vita handheld device was game changing, was game-changing at all.

Credit: Sony

Weekly Feature
Even Small Businesses Are Ready for Marketing Automation
Cole Haan #WanderingSole Pinterest Contest

FTC Letter (3/20/14)

• Financial incentive of $1,000 prize requires disclosure of contest in hashtag to ensure all users aware of potential endorsement.

• #WanderingSole not sufficient because only includes brand name.

• No penalty
Geolocation: A New World for Retail
Geolocation in Retail – Touch Points

- Pharmacy
- Photo
- Store Locator
- Weekly Ad & Coupons
- Refill by Scan
- Scanner
- Pill Reminder
- Rewards
- Shopping List
- Shop
- DR Walk-In
- Steps

Kiehl’s Alerts
Need ur daily dose of healthy skin essentials? Come in 4 a sample of Powerful-Strength Line-Reducing Concentrate @Kiehl's 13th and 3rd Avenue.

Close
Reply
Retail Response? Self-Regulation

• Mobile Location Analytics (MLA) Code of Conduct: Seven Principles for Retail Vendors
  – One: Notice of data collection and use unless aggregated
  – Two: Limited collection
  – Three: Choice and Opt-out
  – Four: No adverse manner use
  – Five: Onward Transfer
  – Six: Limited Retention
  – Seven: Consumer Education
Self-Regulatory Principles

• Notice
  – Clear, short, standardized, physically prominent, just-in-time

• Limited Collection & Retention
  – Collect only what is necessary; no PII (unless de-identified/consent)
  – Disclose retention periods; be reasonable

• Choice
  – Provide opt-out capability for tracking devices
  – Require opt-in to collect PII or where used to contact the customer

• Limit Uses & Disclosures/Onward Transfer
  – Don’t adversely use for employment, credit, health care, insurance
Key Geolocation Data Issues

• Notice, Choice & Transparency
  – Does MLA retailer follow self-regulatory principles?
  – Is notice sufficient? Is there meaningful choice (opt-in vs. opt-out)?

• Uses and Disclosures
  – Is data anonymous/aggregated or identifiable?
  – Are uses/disclosures consistent with marketing restrictions (CAN-SPAM)?

• Storage & Security
  – How long is data stored? Why?
  – How is it secured?

• Data Ownership
  – Who owns the data? What happens if there is a dispute?
Checklist for Wearable Technology
Product Launch

1. Design for Security
2. Design for Safety
3. Design for Privacy
4. Protect IP Rights and Consider License Agreements
5. Comply with Industry Standards
6. Set-up a Continuous Improvement Loop
7. Review Equipment Authorization from the FCC
8. Create Accurate and Truthful Advertisements
9. Inform Consumers through Packaging and Instructions
In the Matter of TRENDnet, Inc.
FTC Expectations and Negligence

“[F]ailure to implement a process to actively monitor security vulnerability reports from third-party researchers, academics or other members of the public.”

• Consent Order, *FTC v. TRENDSnet* (2013)
Fitbit Recalls Force Activity-Tracking Wristband Due to Risk of Skin Irritation

Consumers should stop using this product unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product.

Recall date: MARCH 12, 2014
Recall number: 14-129

Recall Summary

Name of product:

Wireless activity-tracking wristband

Hazard:

Users can develop allergic reactions to the stainless steel casing, materials used in the strap, or adhesives used to assemble the product, resulting in redness, rashes or blistering where the skin has been in contact with the tracker.

Remedy:

$ Refund

1 of 1 photos
FTC Data Security Authority Confirmed

By Elliot Golding and Kate M. Growley on August 27, 2015
Posted in Advertising & Product Risk Management, Privacy & Data Protection

The Third Circuit’s Monday decision in FTC v. Wyndham Worldwide confirmed the Federal Trade Commission’s (FTC) statutory authority to pursue enforcement actions for allegedly “unfair” data security practices under Section 5 of the FTC Act. Many believe that the decision will embolden the FTC to continue aggressively regulating what it considers to be unreasonable data security practices. A complete analysis of the decision and its implications is available here.
Risk Profile on the IoT

• Enforcement/regulators
  o Privacy=FTC/State AGs
  o Security Around Information = FTC/State AGs
  o Security Affecting Safety= NHTSA, FDA, CPSC

• Litigation-Individual/class actions
  o Loss/misuse of information
  o Security flaw that results in safety issue
  o Product performance/warranty claims

• Damage to brand and reputation
Questions?