



# Generating *Buzz* Without Getting *Stung*

*Stay on the right side of the FTC with these 17 marketing guidelines*

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**A** good marketing department knows how to generate product buzz by leveraging influencers and promotions. The challenge is to avoid being stung by the Federal Trade Commission's Endorsement Guides (available at [www.ftc.gov](http://www.ftc.gov)), other regulations and state laws relating to truth in advertising, or by platforms themselves.

Marketing departments and firms have scrambled to integrate social media advertising into their strategies. Mobile devices and social media have risen to a prominent place in the lives of many consumers, particularly those in the valuable younger demographics, who have never known a world without computers and cell phones. They have already unplugged from conventional TV and cable.

Social media platforms – such as Twitter, Facebook, Instagram and many others – are learning how to market to these users. In April 2015, EMarketer.com reported, “Advertisers in the U.S. and Canada place a premium on social media and will ramp up paid spending on social networks 31 percent this year to pass \$10 billion for the first time.” The chief marketing officer of Council World Wide reported that as of March 2015, 95 percent of brands tweet, most of them several times per day, and

nearly half of brands reply to at least one tweet per day. These numbers are expected to rise rapidly in the years to come. Yet in February 2015, 83 percent of consumers reported that they have had a bad experience with social media marketing.

Social media marketing can consist of straightforward ads, but an effective use of social media is gained from leveraging so-called influencers into creating viral or guerilla campaigns. Influencers can be consumers, bloggers, celebrities or really anyone with a large following on social media networks. They can even include ordinary contest participants and company employees. Any influencer receiving anything of value, or anyone whose objectivity may be questioned, is subject to scrutiny from the FTC regarding an endorsement. Giant retailers may also run algorithms to catch solicited product reviews.

Promotions can include, for example, campaigns aimed at getting consumers' friends to like a product, giving free product samples to influential bloggers, email “send to a friend” campaigns, Twitter campaigns that promise a \$1,000 gift certificate for the most retweets and some “like us” or “review this product” campaigns.

The Internet provides easy ways to reach prospective customers, but it also makes it easy for some of the 83 percent who had a bad experience with social media marketing to be heard, either through counter-campaigns or complaints to the authorities, including the FTC. Worst-case scenarios include class action lawsuits, onerous fines, and adverse actions by retailers. The tenets on the next page can help.

**83 percent of consumers have had a bad experience with social media marketing.**



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# Social Media Marketing Guidelines

*The FTC guides for online advertising continue to reflect the basic truth-in-advertising principle relevant to all advertisements, endorsements, and many viral and guerilla marketing campaigns. While the guides and section 5 of the FTC Act can be lengthy and confusing, at the end of the day accuracy and openness are key. Regularly evaluate the marketing department's practices and make sure new hires know the rules. If truth and openness are the top marketing priorities, companies should be able to avoid painful enforcement actions.*

**1** Though social media is a relatively new medium, the traditional rules of truth in advertising that have evolved for print and TV ads still apply.

**2** Disclosures are increasingly being criticized for being stuffed with legalese. Apart from regulated advertisements, such as for pharmaceuticals or automobiles, try to use plain English. The rule is that the average customer needs to understand the disclosure.

**3** The FTC's rules apply to *everyone* in the company's network: employees, public relations and advertising firms, and even the influencers (bloggers and consumers themselves). Each one can potentially be liable for violations of the FTC Act. If unsure, consult with experienced counsel, and perhaps apply the "better safe than sorry" rule regarding disclosures.

**4** Do not assume that everyone knows that some bloggers are paid or receive other compensation in exchange for reviews.

**5** Disclosures should be simple and straightforward. A statement such as "Company X gave me this product to try" will usually be effective. Also likely effective, include any of the following words at the beginning of a tweet: sponsored, promotion, paid ad, or #ad.

**6** If a blogger, reviewer or other influencer receives some benefit, no matter how small, the benefit must be disclosed. This includes money but can also be a free sample, a deep discount, a free meal or another intangible, such as goodwill from a family member or good friend. As in all good journalism, a conflict of interest must be disclosed.

**7** It is the obligation of the company running a promotion to reasonably ensure compliance by participants. Simply publishing rules that require participants to comply with FTC rules or a website's terms of service may not be enough if one knows that the rules are likely to be ignored, or are being ignored, by participants. Setting up and running a bona fide training program for bloggers and participants can mitigate the impact of rogue participants who don't follow the rules.

**8** If an ad or promotion mentions an extraordinary result, the extraordinary nature of the result should be disclosed. So if Bill lost 10 pounds in one week by using product X, but the expected result is 1 pound per week, whoever is talking about Bill's weight loss should also say something like "results not typical." Alternatively, if the typical result is being advertised, it should be supported by adequate, rigorous and scientifically sound research. Anecdotal results should not be presented as being typical.

**9** Reviews by company employees are particularly sensitive and are not recommended unless clear disclosure of the employment relationship is made. It is best to have a policy in place prohibiting employees from reviewing company (or competitor) products without prior permission and clearance from the company's marketing and legal departments. Periodic reminders of this policy help. If an instance of noncompliance with this policy comes to the company's attention, the employee should be reminded of the policy and asked to update or delete that review.

**10** Don't permit employees or influencers to post about any competing products or competitors without close review, preferably with assistance from a disinterested professional, and especially if emotions are running hot. These posts can backfire quite spectacularly.

**11** Asking customers to review a product or service is permissible, but paying customers or anyone else to post a review can pose an issue. If the company chooses to pay a reviewer, the payment should not be part of the original solicitation to make the review and should be content neutral. If the payment must be part of the original solicitation, that payment should be noted in any use of the review for marketing purposes.

**12** Influencers should never talk positively about a great experience with a product they did not use or actually disliked. It happens! Amazon.com has now sued many freelancers for posting fake product reviews, which is a small part of the damage it can do to the companies paying those freelancers.

**13** Contests and sweepstakes are particularly tricky areas. If something of value is being given away in exchange for social media users posting or tweeting about a product or service, that must be disclosed not only in the marketing for the contest but in participants' tweets and posts as well. Use of a #contest or #sweepstakes hashtag should be sufficient disclosure, but less prominent notice (for example, a #sweeps hashtag) may not be acceptable if an average consumer would not understand that it indicates a contest.

**14** "Free" and "money back" can be very expensive words to use in online advertising. If there are free products or risk-free trials, there must also be detailed, clear and very conspicuous disclosures of all the material terms and conditions that apply to the offer.

**15** Clearly disclose if the bloggers or reviewers are using affiliate links that result in commission payments. This is sometimes done when a link takes readers to a page where a purchase can be made and a percentage of that purchase is paid to the reviewer as a commission. Disclosure in proximity to the purchase is important, and the closer this disclosure is made to the active link, the clearer it will be. Burying the disclosure in a website's or app's terms of use is likely inadequate, and even placement at the bottom of an article where the average reader would not be expected to continue reading may be insufficient.

**16** The FTC evaluates whether an ad, review or other marketing piece is clear and not misleading from the perspective of the average consumer. It can be easy to fall into groupthink in a marketing department and believe that a statement is clear, but when viewed from the perspective of an average consumer, it might not be so clear. Have people outside the marketing department vet practices and statements to be sure that they are not confusing and don't leave out anything important.

**17** The duty to present accurate reviews is maintained over time. If the product has changed, an old review may no longer be valid. Periodically assess past reviews and promotions to ensure that they still apply to the present-day product, and amend or delete old reviews or promotions that may be misleading in light of a product change.