

>> ELLA KRAINSKY: All right, everyone. Thank you and welcome back. Just a few house keeping things I wanted to mention. There's some seats up here in the front. All the reserved seats are free now, so if anybody needs additional seats, come on up. Another thing I wanted to mention is our comments page is now open, so if anybody has comments after the workshop, we really welcome your feedback. Please, go ahead and log on to our Webpage and you'll see a link to submit comments. All right. Now it is time for our second panel which is Social Media Advertising Disclosures.

>> RICH CLELAND: Hey. Good morning. My name is Rich Cleland. I work in the Division of Advertising Practices at the Federal Trade Commission. And this panel is gonna discuss disclosures in social media. And, you know, to make it clear up front when we talk about social media we're talking about consumers talking to consumers and not necessarily the platforms on which those discussions happen. And we're going to be focusing on how disclosures should be made in that medium, in that area, and not necessarily on, you know, whether a disclosure is required or what's actually required in that disclosure. That's a discussion for a different time. So, we're going to assume for the purposes of our discussions this morning that a disclosure needs to be made, and the question we're going to try to respond to is what is the best way to make that disclosure. We're going to be covering three general issues. The first is ad's totally arbitrary, but I made it up -- we're going to be covering disclosures in sort of nonrestricted space where you've got plenty of space to make disclosures. And the question is, "What's the best way?" And then we're gonna talk about -- and an example, blogs, your blog, personal blogs. And then we're gonna talk about disclosures in restricted space media -- in Twitter and things like that. And then finally we're gonna talk about how disclosures should be made or can be made on social media platforms that allow only for a single sign of approval or check in. And there is some materiality disclosure that needs to be made in that context. We have a highly qualified panel here to discuss these issues. We've got both from in terms of users and sponsors of various social media. I'm gonna ask the panelists now to introduce themselves. And also, I'd like to give you an opportunity at this point when you introduce yourself



>> MALCOLM FAULDS: Hi. I'm Malcolm Faulds. I'm the Senior Vice President of Marketing at BzzAgent. I'm also affiliated with WOMMA, as well. I'm on the Member Ethics Advisory Panel, and we work on some of the disclosure guidance that we give to our member companies. The biggest issue that I see for ~~us~~ is an earned media space, which is what word of mouth marketing is. It's a people-based media. You need to have authenticity. It needs to be personal. It needs to be relevant. It needs to be trusted between people, or else it doesn't work. And I think these disclosure guides, when done right, support that idea of creating authentic communications between people. If they're too sponsored, or, God forbid, if they feel like they're still conversations, they won't be effective. So, we're very supportive of any initiatives that give better guidance to companies on how to do this in a way that supports people having authentic and transparent conversations among each other.

>> STACEY FERGUSON: HI. I'm Stacey Ferguson. I am here as a blogger, and founder of the Blogalicious Community and Conferences. And I may or may not have worked here for seven years prior to that. [ Laughter ] From a blogger perspective, I would say the biggest issue is wanting to make the proper disclosures but not wanting to detract from your message and from the look and feel of your blog. Because a blogger, your primary goal is to appeal to your readers. And if that's clouded with a lot of legal jargon or an unattractive disclosure, that makes the message not authentic -- it seems forced. Then you are at risk of losing your readers, which is your sole purpose for being. So, I see that as the major challenge for us.

>> SUSAN SHOOK: Hi. I'm Susan Shook. I'm an Associate General Counsel, Associate Director with the Procter & Gamble Company. I lead a global privacy and digital law group who's dealing with these things every day. I think our biggest challenge is keeping pace with the new platforms or significant changes in the platforms that affect how we go about making our commercial and marketing messages and effectively how consumers are engaging in those platforms. That's part of why I think having a flexible approach is important. It's not, to what Susan said earlier, size one fits-all. And, you know, despite what other lawyers or our clients might think, we're not playing around at our desks just catching up with our Facebook contacts, but we're actually trying to figure out how these platforms or nuances to them work and how the consumers are engaging in a way that we can make appropriate disclosures and read our compliance requirements.

>> ROBERT WEISSMAN: Hi. I'm Robert Weissman. I'm President of Public Citizen. I'll do three points to offer a little counterbalance. The first point is that advertising on the new

blog, she's talking about remodeling her bathroom. And in the middle of the blog here she says, "but I finally ended up using Paint World's amazing ~~One-Coat~~ paint in canary sunrise. Paint World sent me two gallons to try out, and this paint is amazing." Stacey, any problems with that example that you see?

>> STACEY FERGUSON: No problems for me.

>> RICH CLELAND: [ Chuckles ] What do you think are the strengths of this?

>> STACEY FERGUSON: I like this -- again, speaking as a blogger -- ~~because~~ <sup>because</sup> in her own voice. It's part of her message that she's already trying to communicate, and she's making the reader aware that she did not pay for the paint. So, that should satisfy the disclosure requirement. And yet, it doesn't take away from her story. So, from that perspective I like the way that she's done it there.

>> RICH CLELAND: Okay. Malcolm?

>> MALCOLM FAULDS: Oh. Was this the example that actually had the ~~line~~ <sup>inline</sup> disclosure? Sorry. The one that was on top here.

>> RICH CLELAND: Oh. [ Laughs ]

>> STACEY FERGUSON: Yeah, here.

>> MALCOLM FAULDS: Okay.

>> RICH CLELAND: Yes, this is the one with the ~~line~~ <sup>inline</sup> disclosure.

>> MALCOLM FAULDS: Okay, good. No, I agree then. I think that that's best practice when it has inline disclosure. So, in the text of the post itself. Why that's so important is that in social media and so much digital technology now, the content doesn't reside in one place. It gets shared



much it will matter to the reader if Katie was randomly selected to get the paint or paid to talk about it because you know that she didn't go buy this paint on her own and she does have some relationship with Paint World. I have seen a lot of bloggers. And, you know, contrary to popular belief, most bloggers want to do the right thing and want to disclose. And I've seen a lot of over disclosing. SO, there's a long paragraph at the end, and it says, you know, "Paint World contacted me. They offered me \$99 to write two posts for them on these months." And it goes on and on and on. And I really don't like those type of disclosures because then it seems forced. Then it seems like they are just the mouthpiece for Paint World. Whereas this seems more organic, natural, and you get the point. So, I don't know if it makes that much of a difference how Katie was contacted as long as she makes the disclosure at the end of the day.

>> RICH CLELAND: And you'll notice here - The question here is if this disclosure is here, which seems to be the core disclosure in this particular example, then the rest of the details could be put in under disclosures and disclaimers if she felt that information was necessary?

>> STACEY FERGUSON: She could, but, as Malcolm said, almost no one is gonna read that link. [ Laughs ]

>> RICH CLELAND: Well, we're gonna get to that issue. [ Laughs ] Okay. Let's move on to our second example. And in this example, the disclaimer is still in the text. And it is at the bottom down there, and it says, "By the way, Paint World gave me the paint just to try out, but this paint is so terrific, I'll buy it myself next time." And in the text there's a link to Paint World's Website. Is this -- Do you see this as different than our first example? Anybody? Malcolm?

>> MALCOLM FAULDS: No. I don't really see a material difference in it. I think that she's disclosing that she got the paint for free. She's giving her opinion on the product efficacy. So, you know, to me -- What I would look for as a reader but also as someone who organizes these kind of programs, is she offering her opinion based on actual experience with the product, is she disclosing that she got the product for free? And it looks like she's doing that in this case.

>> RICH CLELAND: Does anyone have a contrary view? Stacey?

>> STACEY FERGUSON: I was just gonna say I agree. If she really wanted to go the extra mile,



substance of the disclosure whether it's required versus how best to make it. But, in this example, I can't help but wonder Yeah. I think the first one is better than the second one.

>> RICH CLELAND: Mm-hmm.

>> JIM DUDUKOVICH: But do I think anyone is going to get harmed by the second one?

>> RICH CLELAND: But that's primarily because you don't necessarily see it as material.

>> JIM DUDUKOVICH: You're right.

>> RICH CLELAND: That's off topic. [ Chuckles ]

>> JIM DUDUKOVICH: Right.

>> RICH CLELAND: Uh, okay--

>> JIM DUDUKOVICH: That's probably not the last time for me.

>> RICH CLELAND: No, no, no, no. And that's fine. I don't mind being off topic as long as you don't expect a response.

>> JIM DUDUKOVICH: [ Laughs ]

>> MALCOLM FAULDS: [ Speaking indistinctly ]

>> RICH CLELAND: All right. Is this the third exam-- Did that? Okay. I can't see it from up here. Okay. And our third example is the disclosure of the information that's in the disclosure. She's taken it out of the text. She's now under the disclosures and disclaimers, and what it says is that Katie regularly receives products to review and that Paint World gave her the gallons of paint. Comments on this particular form of disclosure?

>> MALCOLM FAULDS: I'll just reiterate my point from before. I think that this is the bare minimum for someone who would be disclosing something. We wouldn't consider it sufficient our program just because it's not inline with the review text itself, which is really important as content gets syndicated out to so many places these days. Those kind of disclosure and disclaimer pages don't always go with the content where it is displayed.

>> RICH CLELAND: Stacey, is it clear and conspicuous?

>> STACEY FERGUSON: Not at all. [ Chuckles ]

>> RICH CLELAND: [ Chuckles ]

>> STACEY FERGUSON: And I would agree. This doesn't even meet the bare minimum for me because I don't treat the separate disclosure and disclaimers page as sufficient in any case. So, it would have to be where the endorsement is in order for it to be sufficient.

>> RICH CLELAND: Susan?

>> SUSAN COOPER: + Sorry. I think I'd just make the point that while I agree with the other commenters here, I think that we're talking about a blog and a Web page. And if somebody's accessing it via a mobile device or via a desk top computer, there's obviously a lot of text here and a lot of space. And so given, perhaps, a lack of space constraint here that makes this type of disclosure maybe less effective. But if we were talking about something else, like a tweet, and the same type of information were being communicated where space constraints might be an issue, then this type of disclosure might be effective. And it's really just an example of how for one type of social media platform a disclosure might not be effective, but the same type of disclosure could in fact be effective in another platform.

>> STACEY FERGUSON: The only thing I would add to that is that there should be some clue that the reader needs to click somewhere else. And there's not that clue here. On Twitter, where

there is less space, the clue is right there because the light is there. But here I could read her entire post and go my day and never realize that I should have read something on her disclosure page. So, I think there's a little bit of a difference.

>> RICH CLELAND: Okay. Robert?

>> ROBERT WEISSMAN: I agree with everything except sort of the Twitter application, but we can get to that later. I wanted to just add that, you know, I think one thing about the materiality 'cause we're assuming that. But the first hypothetical has just two gallons of paint, and I think that that colors the way we think about it 'cause it seems kind of diminutive. If the giveaway had been, "Yeah, they gave me all the paint I needed to paint my house," then, you know, we would have been more attentive to it. So, I think it's just the hypotheticals tend to just sort of prime us -- to use a pun there.

>> STACEY FERGUSON: [ Laughs ]

>> ROBERT WEISSMAN: Thank you. [ Laughter ]

>> ROBERT WEISSMAN: I was hanging for a minute. [ Laughter ] Prime us to how we're thinking about it, and I think maybe that's one -- maybe we're a little less worked up than we would be if the consideration had been larger.

>> MALCOLM FAULDS: I agree it would not be adequate. I think the same technical problem still exi





that cutandpaste language and put it at the end and not necessarily in the text where the

make it easy.” I think putting it in plain English is always going to be better than adding a little "ad" or whatever else is at the end if she's gonna say that in the tweet.



Twitter, and #spon is sort of what's been offered up and adopted. And you know, quite frankly, when I look at this, I think it's clearly a paid endorsement. I don't think there's any question in my mind.

>> RICH CLELAND: Yeah, but we could change the ~~example~~ example, so that's not the driving part of this example.

>> JIM DUDUKOVICH: Right.

>> RICH CLELAND: The driving part is, do consumers understand #spon? It's something that's become quite common.

>> MALE SPEAKER: Game ~~or~~.

>> RICH CLELAND: That's right.

>> MALE SPEAKER: Next.

>> RICH CLELAND: Okay. It means "sponsored." It's supposed to mean "sponsored message," I believe. Is that...

>> MALCOLM FAULDS: Yep, and this actually is one of the hashtags that



>> MALCOLM FAULDS: I thought that was a really good point. And to put some color behind it, there's a very popular interior design commerce site right now that offers its members incentives to refer their friends to sign up. And if you get five friends to sign up, you get \$20. If you get 30 friends to sign up, you get \$40. And it kind of multiplies after that. And they give ~~some~~ sharing tools so you can post that link to your blog, but you can post it as a message to Facebook or you can post it to Twitter. But they don't have any kind of disclosure in any of their messaging around that referral scheme. So I think, to your point about different offer types, you know, it's happening

it is here for making the disclosures, but the primary people who are involved in the

my story, then that should be something to be considered, I would think. And maybe it's too idealistic.

>> RICH CLELAND: Robert?

>> ROBERT WEISSMAN: I agree with Susan's point that the duty rests with the advertiser, not with the platform. And if the advertiser can't figure it out, then they can't advertise. On the other hand, if the platform wants to facilitate advertising and it's not possible to do it, then it may be in the platform's interest to try to work out some of these kinds of solutions.

>> JIM DUDUKOVICH: The link doesn't work. I tried it. [ Laughter ]

>> RICH CLELAND: All right. And this one is just the link. The next example is just the link and assuming that all the disclosure information, including the typicality disclosure and the materiality here- does the fact that the link is not labeled in any way -- would it be considered under anybody's standard to be effective?

>> MALCOLM FAULDS: For WOMMA, the prior one would have been compliant because of the "#spon," but this one actually would not be because there is no hashtag indicating the material connection.

>> RICH CLELAND: Is there -- Well, that's a good question. Let me back up to it just a minute there because the -- one of the things, one of the questions involved in that example was, was it conspicuous, not whether it was understandable.

>> MALCOLM FAULDS: E2(D)3ID 4k1366 7 6.55 0 T\* ( Tw 29.33 0h0(a)4mi)-2(t)] .8 19.85 0 Td ( )Tj E

>> RICH CLELAND: Would I say "relationship," or should I would it be more information about the product?

>> STACEY FERGUSON: This one, I would think there is information about the relationship. The previous one, where there wasn't the word "disclose," I would think I could go there and buy the Fat Away pills.

>> RICH CLELAND: Mm-hmm.

>> MALCOLM FAULDS: Agreed. I think labeling is everything in these kinds of disclosure links. And there are some solutions on the market and some planned ones that are much more intuitive for how they communicate to a reader that there is disclosure language or some kind of rules or terms behind a link that would explain or give a little bit more context to the tweet.

>> RICH CLELAND: Well, let's talk about that for a second, because that sort of depends on consumer issue, doesn't it? And who has the responsibility to educate consumers what these messages are or what the mechanisms for the various platforms are? Well, if you're on Twitter, this is, you know, the way it's done. If you're over here, this is the way it's done. Who has the responsibility to do 6(e)4(l)-2(l) court's tmdisi.the educatducation more c ssj EM2MAteJSTc5(PTc5(EA)2



>> JIM DUDUKOVICH: Great question. [ Laughter ] Don't have an answer. Don't have the data. I don't think anybody does. So, in response, I'll, you know, throw the question back and say, you know, start from the other end you know, is there any evidence that consumers don't understand it or are being harmed through the use of, you know, icons or badges, #spon? I don't know where we start. It's a chicken-egg thing. Do we assume that consumers don't know, you know, guilty until proven innocent, or do we wait until consumers complain and say, "I've been harmed. I didn't understand that this was a paid endorsement, even though it said #spon"?

>> RICH CLELAND: Susan?

>> SUSAN SHOOK: I was gonna add, you know, if you change those examples and did the #paidad even before that came out as guidance, I think most consumers would think, "This is a paid ad," right? So, to the chicken and egg, it also goes, again, to the judgment of, is the disclosure adding here? Does it suggest very overtly that there's something going on here with a sponsorship relationship?

>> RICH CLELAND: Mm-hmm.

>> SUSAN SHOOK: And you don't necessarily have to have loads of consumer research to suggest a "paidad" would make the disclosure here apparent.

>> RICH CLELAND: Right. Robert?

>> ROBERT WEISSMAN: Yeah. I don't think it's a chicken-egg question. I'm not sure if it's the chicken or the egg, but, I mean, the answer is yes. We assume the consumers don't know. If they're not disclosed to about hidden arrangements, we assume that they don't know, and we assume that because it's true. And it's a total -- And it's a problem, I think, in these kinds of conversations and a mistake that people who are supercognizant of this stuff think, "Well, everybody knows." Everybody does not know. And if you watch television, you don't know. You know there's paid advertisements all the time, but you miss them all the time. It's impossible to keep up with the number of paid ads on TV. So

I think a high degree of Obviously, the duty's on the advertiser. I think that the idea of an icon requires at least a high degree of skepticism that it can be done, as opposed to using actual words that describe what the thing is. I think this example is bad and it's unsatisfactory for a variety of reasons, because, I mean, I looked at the disclosure, and I would guess that the disclosure's about the product, not the arrangement. But even if it had been clearer, even if you had something that was sort of more generic I-guess this is pretty generic it's...after all. This is a classic case where the disclosure needs to be simultaneous with the advertisement, because the whole value of this kind of -- and, again, this is -- the example is imperfect because the text is so bad, so blatant -- but this kind of association with a celebrity -- it's very impressionistic. It's very much about trying to get you to act on the emotion. And if you don't know at that moment that you're being advertised to, then you're fundamentally being tricked. So this is a case where the disclosure has to be simultaneous, prominent, easily understood, and the burden to make sure all those things is true is, I think, certainly on the advertiser.

>> RICH CLELAND: Okay. Now I'm gonna go on to the interests of time, I'm gonna move on to a -- actually, now we're gonna start into the hard questions. You know, so far, we've been talking about disclosures that are typicality disclosures on an endorsement guides or materiality disclosures, and those are all disclosures that can be made relatively -- in my view relatively shortly or relatively short. So let's talk about something else where, perhaps, a longer type of disclosure is needed, more information. I think Jim -- was it Jim? You came up with this exam2(ua)49

assume that you cannot buy this product without being told that it only works if you use propane gas-- so it's labeled on the package. It's on point of sale. It's everywhere. You can't possibly buy it without knowing that -- what duty does the advertiser have to tell the blogger, "Make sure, if you talk about our product, you disclose that it only works with propane gas"? You know, I would say that it's a stretch. It's a stretch to say that the blogger's got to disclose that because purchases can't actually buy the product without learning about that condition.

>> MALCOLM FAULDS: I think if you come back to the earlier theme of authenticity in earned media, that only works when people trust each other and they recognize the other person as being someone that they know or trust online in certain instances -- that raises the bar for this kind of thing. And Nielsen recently came out with their Trust in Media Study, and they said that 70% of consumers are more likely to trust a stranger on a product review site than they are to trust the brand's own Website. And so, you know, the dynamics have really changed, in terms of where people get information and what they trust. So given that there's so much trust in these peer-to-peer conversations, I think it's incumbent on the advertiser or the agency or whoever's organizing the program to make sure that the participants are sharing all of the relevant information because, if they don't, the participants are gonna lose credibility among their social networks, which is the last thing that you want to happen.

>> RICH CLELAND: Okay. Robert?

>> ROBERT WEISSMAN: A couple points I mean, one would be maybe a starting point way

>> STACEY FERGUSON: He took the words out of my mouth. And, also, you know, maybe the advertiser has to decide certain campaigns should not be run on Twitter. Maybe, for this particular example, it has to be a blog post, and I've seen contracts where that comes through.

>> RICH CLELAND: Mm-hmm.

>> STACEY FERGUSON: "This -- We would like a blog post. For these short messages, you can put it on Twitter." But maybe that has to be a call the term of the adve3 >>BDC -0.002y ay ay ay a

>> JIM DUDUKOVICH: You know, I think --

for one minute, pop off, and you'll miss the subsequent tweets. So if there's a statement or a claim being made, the disclosure has to be the right next to that message or it's gonna get lost.

>> RICH CLELAND: I'm gonna move on to the third area I promised I would talk about. You know, the issue was raised in a number of our comments that there are some ~~media~~ <sup>social</sup> platforms, such as Facebook, Facebook "likes," Google+, and some branded Websites allow users to endorse a product or service and communicate that ~~send~~ <sup>send</sup> to their social networks. Assuming that some disclosure is necessary --

>> MALCOLM FAULDS: One issue that we identified at WOMMA when we were revising the disclosure guides for our members was these signs of approval and how they can sometimes be a barrier to complete information around promotions, so -- called "gate-keeping," for lack of a better term. So, if someone needs to like a Facebook page in order to see the rules around a promotion, that's problematic, or if they have to join a community to see the rules of a membership, that's problematic because their message for these promotions might be reaching people that don't know they have to like the page to see the rules or what's going on. Why people are acting in certain ways or saying certain things. So, you know, I think that what Susan said before is about the limited space and all of that, but I think that, sometimes, people have used these in restrictive ways that -- and that's problematic.

>> MALCOLM FAULDS: Just to close out the "liking" comment, you know, we recognize there are some valid needs for why you'd want to present some information to people who "liked" a certain page, but whenever that creates promotions that would affect people who are not necessarily members of those pages, we just want to make sure that marketers understand that there's an expectation that the information around those promotions is available to people who haven't necessarily liked those pages, that there is public comment that isn't behind the "like" gate.

>> RICH CLELAND: Okay. I think we probably already addressed the question of whether or not there are technological solutions to this?

>> SUSAN COOPER: Yeah, I mean, the only other thing to say maybe is that there may not be a "dislike" button, but you can "unlike." [ Laughter ] So, I mean, people can "like" something, and I know that it's not a perfect solution, but you can like something for the purpose of obtaining content, and then you can subsequently "unlike" it and you can have that step so that no one can see that story, and then you can "unlike" it to break that connection.

>> RICH CLELAND: Okay. We have a couple of questions here, and one question goes to, how do you make disclosures on review sites, where you're being incentivized to go to a site to post a review? Malcolm?

>> MALCOLM FAULDS: Yeah, this is a really important area. So much of commerce today is influenced by online reviews. The whole idea is that you can take a look at Best Buy for an example of how it's really transforming how people are making purchases and how it's affecting major companies. The best practice is to make line disclosures when there's a material connection between the reviewer and the marketer, and then, when there is a material connection, we also think it's advisable to badge that when possible. So, if you look at Amazon Vine, for instance, it's a program where popular reviewers on Amazon may be getting free products from Amazon. They have a program -- it's called Amazon Vine, and those are registered people. Whenever those displays are running for different product pages, Amazon will badge that. There are other companies, like Bazaarvoice and PowerReviews - actually, that's the same company now - but they do something similar. So that's



a good practice, as well. You want to disclose, in the same expectation you would on Twitter, to readers of product reviews.

>> RICH CLELAND: Jim?

>> JIM DUDUKOVICH: I wanted to open up a can of worms by asking you a question.

>> RICH CLELAND: Good. Time to go fishing.

>> JIM DUDUKOVICH: Yes. And the topic is Pinterest. And I've witnessed a lot of activity going on on Pinterest which you know, Pinterest is a site where the fundamental premise, I think, is that, if I pin something to one of my boards, it means I like it, right? I'm telling people, "Hey, I think this is cool. I like this." Well, when retailers I've seen a number of different incentive programs where you know, "pin it to win it," where if you pin things from a retailer's site onto your board and then send a link in to them, you're entered into a promotion for a chance to win a prize, or if you pin something from a particularly retailer and then want somebody viewing your board clicks through your board and purchases it, you get a credit. What does the FTC think about those? Are those things where the person who's pinning needs to disclose that they're pinning because they're incentivized, rather than because they actually truly like the thi

>> RICH CLELAND: Well, I'm gonna punt.

>> JIM DUDUKOVICH: Can we do that?

>> RICH CLELAND: I'm gonna punt. But I do think that it mean, we've talked about blogs. We've talked about Twitter. We've talked about Google+. But there are a lot of other platforms out there. Stacey, what are some of the disclosure options on these other platforms?

>> STACEY FERGUSON: So, with Pinterest specifically, there's a comment box right there. So you can append a disclosure to your pin, and should. Pinterest is so new for a lot of people that it's not being treated in the same way yet as Twitter and Facebook are, in terms of disclosures, but

if you are pinning to win it, you should put that in there. I'm pinning this so I can win the whatever it is. Or you can even put in your comment, "This is a great pair of shoes. If you buy it, you know, use my affiliate link." You can put that in the Pinterest comment box. So it's just a matter of getting users in the frame of mind to know, "A," they need to do it, and, "B," they can do it. And I've seen it not a lot, but I've seen some people disclosing on Pinterest.

>> RICH CLELAND: All right. I want to thank all the panelists. I've certainly learned a lot. And, again, thank you very much. [ Applause ] Okay, we're gonna break for lunch now, and we're gonna resume at 1:30. Sure.