



54TH ANNUAL IFA LEGAL SYMPOSIUM



IFA[®]

INTERNATIONAL FRANCHISE ASSOCIATION



Introductions

- Moderator
 - **Valerie Brennan**
 - *Partner, Plave Koch PLC*
- Speaker
 - **Susan L. Crane**
 - *Group Vice President, Legal, Intellectual Property, Brands & Marketing, Wyndham Hotels & Resorts, Inc.*
- Speaker
 - **Kerry Endert**
 - *Global Director of Contracts, Sourcing, Intellectual Property and Litigation, Taco Bell Corp.*

What We Are Covering Today

- Intellectual Property (Trademarks and Copyrights) in the Evolving Digital/Virtual Marketing Landscape
 - NFTs
 - The Basics
 - Legal Watch Outs/Enforcement
 - Gaming
 - Social Media Marketing
 - Celebrity Partnerships and Influencers
 - Contracts
 - General Guidelines
- Legal Hurdles in the Digital Marketing World
 - Federal Trade Commission Regulation
 - Recent Developments
 - Regulation of Endorsements
 - Penalties

What We Aren't Covering Today

- Regulatory and Other Issues in the Virtual Space
 - Privacy
 - Oversight by the U.S. Securities Exchange Commission
 - Money Laundering
 - Cybersecurity
 - Environmental Concerns
 - Litigation Targeting Cryptocurrencies
 - Other Intellectual Property That is Potentially Relevant in the Virtual World (Patents and Trade Secrets)



IP Issues for Brands in the Virtual World

- Creation, Ownership and Clearance
 - Contracts
- Protection
- Enforcement

Creation, Ownership and Clearance

- Creation and Ownership of a Digital Work
 - The author owns the copyright
 - Exception: employers or commissioning parties own “works-made-for-hire”
- Clearance
 - All copyrightable content should be owned or properly licensed
 - All third-party content must be cleared
 - This includes brands, copyrightable content, or rights of publicity or commercial exploitation

NFTs: The Basics

- What is an NFT?
 - “Non-Fungible Token”
 - Unique and Verifiable Digital Files That Use Blockchain Technology
 - Author of Work Owns the Copyright (subject to “work for hire”)
 - “Minters” create the digital embodiment
 - “Smart contracts” govern the sale and resale (if any)
 - Sold on Digital Marketplaces
- What Companies are in the NFT game?
 - Acura
 - Bojangles (Franchised)
 - Coca-Cola
 - Kendra Scott
 - McDonalds (Franchised)
 - NBA
 - Nike
 - Papa Johns
 - Taco Bell (Franchised)
 - Wingstop (Franchised)
 - Wrangler

NFT Marketplaces

Where users can buy, sell, trade, show off and create their own NFTs

SuperRare

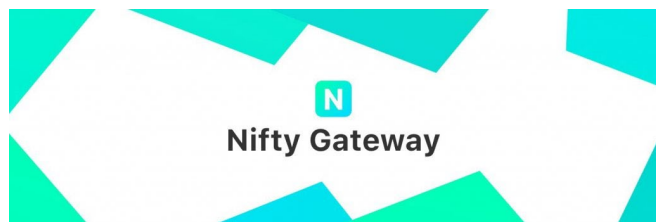


Decentraland

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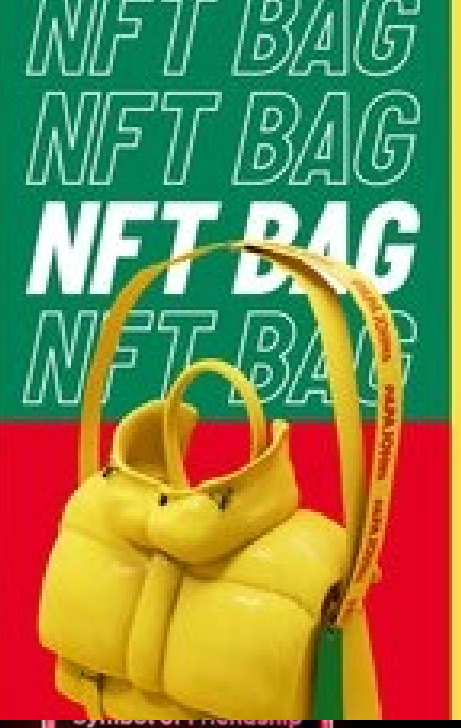


OpenSea





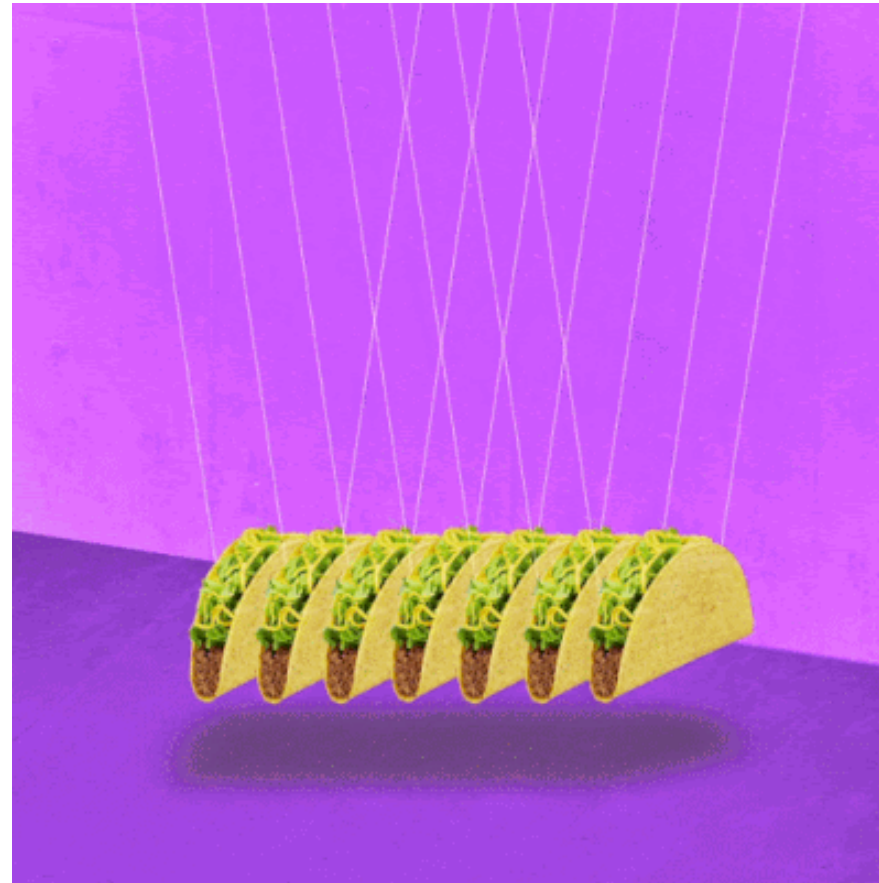
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Brands Playing in the NFT Space



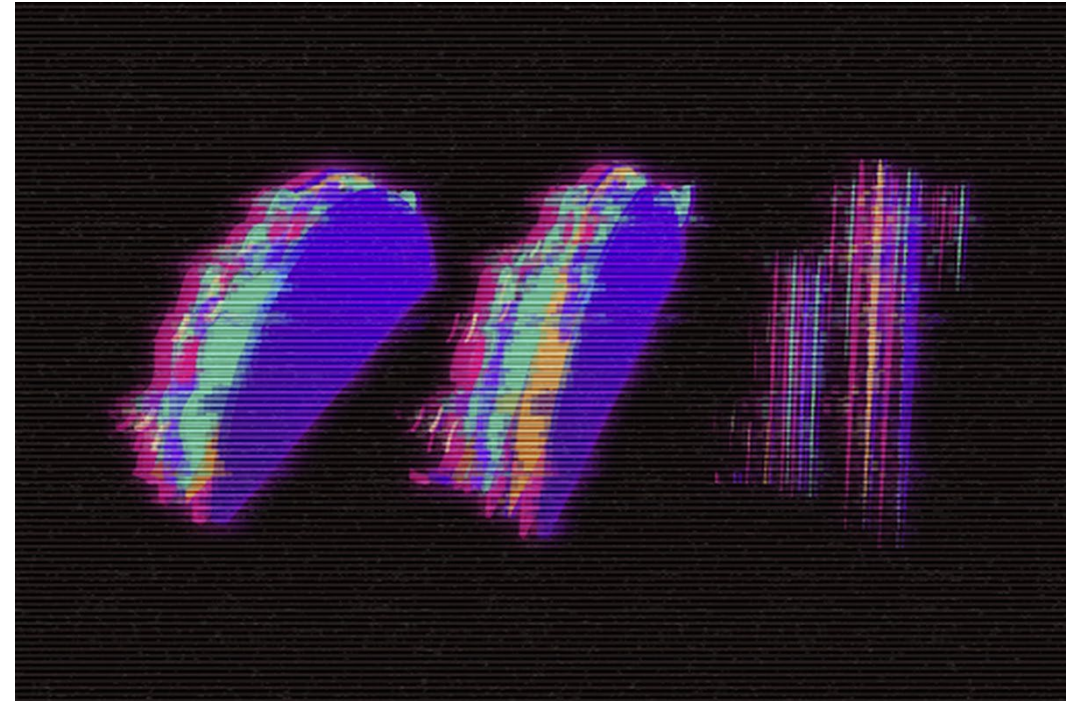
TACO BELL'S DIGITAL ReBELLion



Taco Cradle.

MARCH 2021: TACO BELL RELEASES ITS FIRST NFTaco CRYPTO-ART

- Taco – themed GIFs
- 5 designs; 25 tokens
- Priced at \$1
- Original purchasers received a special surprise
- No paid media
- Proceeds donated to the Taco Bell Foundation
- Sold out in 30 minutes!



Transformative Tacos.

Block Chain Domain Names

- .Eth – the Ethereum Name Space
- .Sol – Solana Name Service
- .Crypto
- .nft

Another Way Brands Are Beginning to Show Up in the Metaverse: Gaming

The Future of Marketing in the Gaming Industry

- Brands can plant QR codes in virtual games/worlds where a user can scan to order products and food
- Games can feature virtual stores or restaurants in a game where you can make purchases/place orders
- Brands can plant “easter eggs” in virtual games/worlds where people who discover them would earn rewards

Protection of IP in the Virtual World

- Virtual offerings can receive trademark protection
 - Common Law
 - Registration
 - The USPTO has created many pre-approved goods, services, and descriptions for virtual versions of physical products
 - Actual Use
 - Intent to Use
 - Requires a bona fide intent to use at the time of filing – you must have a plan!

Taco Bell Files Its Core Trademarks For Goods and Services Associated with the Virtual Worlds

- **C 009. G & S:** Virtual food and beverage products; downloadable multimedia files containing artwork, text, audio and video relating to restaurants, foods, and beverages, authenticated by non-fungible tokens (NFTs); downloadable virtual goods, namely, non-fungible tokens (NFTs), digital tokens, digital collectibles, and digital art; downloadable loyalty cards, incentive cards, and reward cards that may be redeemed for or used towards the purchase of food, drink, and restaurant services in the virtual and real world; downloadable software and downloadable video game software featuring non-fungible tokens (NFTs) and other virtual goods
- **IC 035. G & S:** Online retail services featuring non-fungible tokens (NFTs) and other virtual goods; administration of a customer loyalty program featuring virtual rewards that can be redeemed in the real or virtual world; provision of an online marketplace for buying virtual goods and services in the nature of food and drink items, restaurant services, and non-fungible tokens (NFTs); providing incentive award programs for customers through issuance and processing of loyalty points for goods in the virtual and real world
- **IC 041. G & S:** Entertainment services, namely, providing online virtual restaurants and food and drink items for use in virtual environments; entertainment services, namely, providing an online virtual restaurant where users can earn reward points and virtual currency which may be used to purchase food and beverages in the real or virtual world; entertainment services, namely, providing online actual and virtual concerts and other virtual events; entertainment services, namely, providing online video games; entertainment services, namely, providing online non-downloadable software featuring non-fungible tokens (NFTs) and other virtual goods
- **IC 043. G & S:** Operating a virtual restaurant featuring actual and virtual goods; operating a virtual restaurant featuring home delivery in the real and virtual world

Enforcement of Trademarks in the Metaverse

- Challenges of Enforcement in the Wild, Wild, Web3 Environment
 - Decentralized
 - Unregulated
 - Anonymous
- Brands can get “burned”



Browser tabs: Browse NFTs | OpenSea, User Safety - OpenSea, Search results - OpenSea, OpenSea IP Takedown Request Form, Trademark Status & Document Retrieval

Address bar: https://opensea.io/assets?search[query]=wyndham

OpenSea logo | Search: wyndham | Explore | Stats | Resources | Create

87 items | Single items | Sort by

Filter

Status

Buy Now | On Auction

New | Has Offers

Price

United States Dollar (USD)

Min to Max

Apply

Collections

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Categories

On Sale In

Decentraland N... Wyndham 0 hearts	Tennis Champs... Amit Wyndham Best Offer: 0.0677 Last: 0.159 3 hearts	ENS: Ethereum ... wyndhamresorts.eth Price: 300 1 heart	ENS: Ethereum ... wyndhamresort.eth Price: 300 1 heart	ENS: Ethereum ... wyndhamgrand.eth Price: 500 1 heart
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General Guidelines for Engaging with Celebrities and Influencers on Social Media

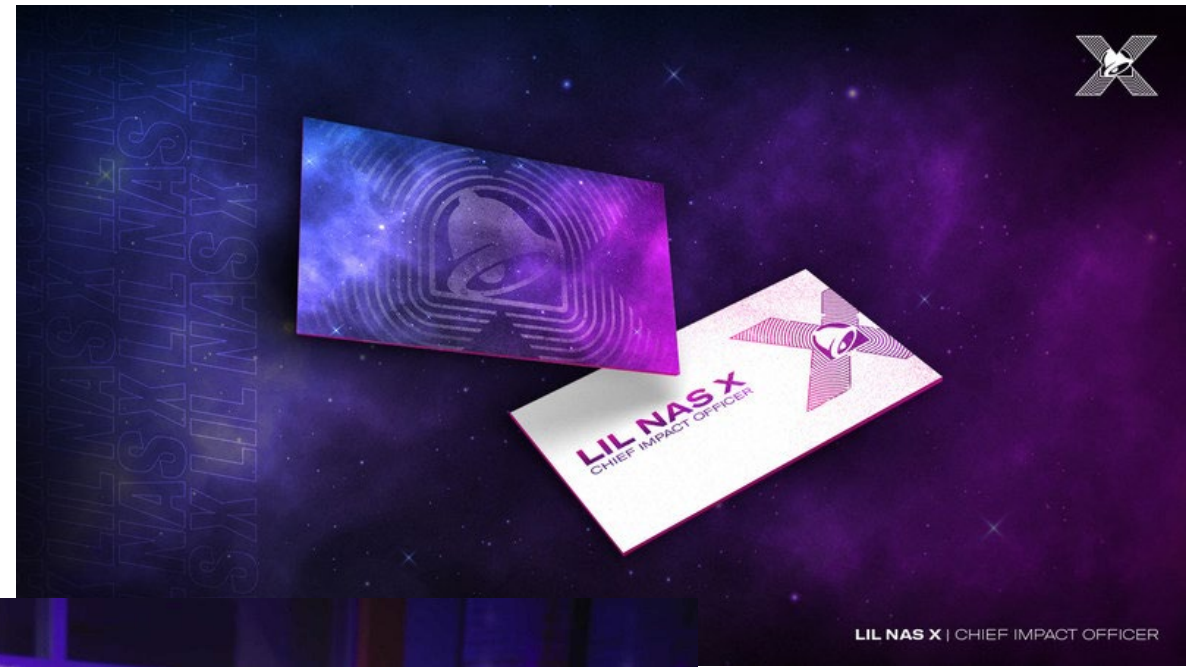
- Accept a celebrity or influencer's follow/friend request; or follow/like a celebrity or influencer (subject to business implications/conflict concerns)
- Like/comment on/re-post, one-time, positive content posted by a celebrity/influencer that @tags or specifically mentions the Brand (as long as it does not include references to third-party marks or other celebrities), and be sure to not suggest a connection/affiliation (e.g., act flattered, surprised)
- Respond to/continue a conversation initiated by a celebrity/influencer as long as the celebrity/influencer continues to interact with you – don't overreach or make it exclusively about the brand
- Use celebrity/influencer name/image/depiction (including lookalikes) without permission
- Post content about a celebrity/influencer that implies an affiliation between the celebrity/influencer and a particular brand if the sponsorship is not appropriately disclosed
- Contact celebrity/influencer more than one time under the permissible circumstances above if they do not respond after first time (i.e., do not hound anyone if it seems as though they do not want to interact)
- Prompt conversations with the general public about celebrities (e.g., polls, surveys, general back-and-forth posts)
- Use celebrity/influencer social media posts in non-social media ads/marketing

Contract Requirements for Influencers and Celebrities

An agreement with any influencer or celebrity should cover:

- Manner of allowed use of the brand (such as compliance with style guidelines)
- Creation of content that the brand might want to own or that it might want to prohibit the influencer from using outside the scope of the relationship
- The brand's right to terminate the relationship unilaterally if the influencer's connection with the brand is no longer in the brand's interest (so called "morality" clauses)
- Liability in the event of intellectual property claims based on influencer's activity, such as if an influencer uses an unlicensed song in a video that results in a copyright claim, or captures in a photo artwork that's copyright-protected
- Limits on influencer's right to engage with competing brands

LIL NAS X: From Restaurant Team Member to Chief Impact Officer



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DOJA CAT – SHE (ALMOST) SINGLEHANDEDLY RESURRECTED THE MEXICAN PIZZA



WE BROUGHT THE MEXICAN PIZZA BACK  ...
@DojaCat

Please [@tacobell](#) bring back Mexican pizza and spicy potato soft taco. I'm asking you nicely first.

11:40 AM · Sep 3, 2020 · Twitter for iPhone



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TRENDING NOW

- Kim Kardashian, Pete Davidson turn Mark Twain Prize show into...
- Shelene Woodley shows off her engagement-ringless finger and...
- Who are Elon Musk's kids? His 7 children's names, ages and mothers

EXCLUSIVE

Catherine Lowe: Why husband Sean doesn't watch 'The Bachelor' anymore

By Evan Hoot December 8, 2021 | 9:25pm



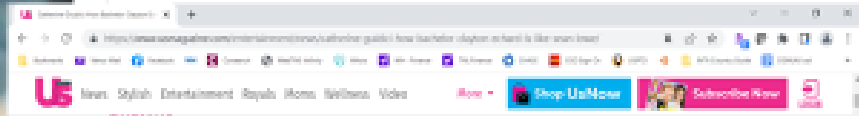
“What he liked when he was watching it was tweeting about the contestants and making fun of people,” Catherine, 35, told us while promoting [her partnership with Wyndham Grand](#).

Hollywood Life

Catherine Lowe Reveals Why 'Bachelor' Couples Are At An 'Immediate Disadvantage': 'It's Not Easy'

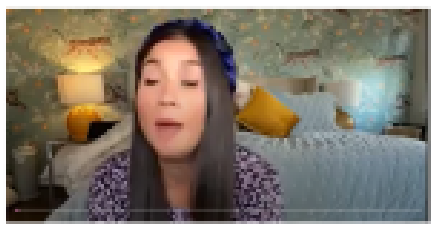
We've watched so many couples fall in love & then eventually split from Bachelor Nation. Catherine Lowe reveals why 'It's not easy' for these relationships right off the bat.

Catherine spoke to HollywoodLife while promoting the new Wyndham Grand Reconnected initiative. “What I love about what Wyndham Grand is doing is that they’re inspiring families to be concentrated on have no distractions during their time together,” she detailed.



Why Catherine Giudici Thinks Clayton Echard's 'Bachelor' Season Will Be Similar to Sean Lowe's

By Lisa Thompson December 6, 2021



After the finale airs, however, Giudici hopes to have a somewhat screen-free holiday season, which is why she partnered with Wyndham Grand on the company's Reconnected initiative. The reality star will be awarding select guests at the hotel chain with a limited-edition “Reconnected” Travel Keepsake Box that includes a Fujifilm Instax Mini 11 camera for taking real photos that don't need to be viewed on a computer. One lucky winner will also receive a 10-day vacation to the Wyndham Grand hotel or resort of their choice.

Oliver Hudson Talks Childhood Road Trips with Sister Kate Hudson and 'Badass' Mom Goldie Hawn

The actor and podcast host chats with PEOPLE about his new Super 8 by Wyndham PSA and how he's incorporating lessons from childhood road trips into his family vacations today

By [Jen Juneau](#) | March 31, 2021 05:26 PM

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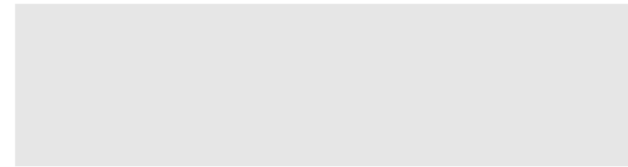


From L to R: Goldie Hawn, Kate Hudson and Oliver Hudson | CREDIT: VINCE BUCCI/GETTY

Home > Celebrity News

Oliver Hudson reveals epic details of family vacations with Goldie Hawn and Kate Hudson

The star spoke to HELLO! about his exciting new project



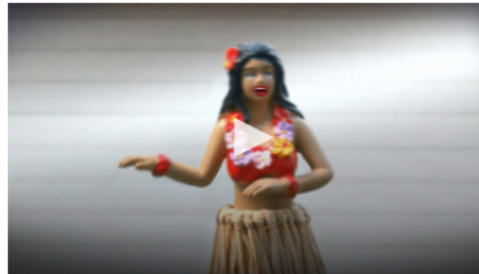
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APRIL 01, 2021 - 06:10 BST
HANNAH HARGRAVE
US Deputy Editor

For most people, a road trip with **Goldie Hawn**, **Kurt Russell** and **Kate Hudson** would sound like something from a Hollywood movie, but for Oliver Hudson, it is just real life.

MORE: Oliver Hudson opens up about his childhood

The fun-loving actor was on his way back from one of the family's legendary getaways - his stepdad **Kurt's birthday** - when he spoke to **HELLO!** for an exclusive interview and revealed what it's really like when the Hawn/Hudson/Russell clan get together.



WATCH: Oliver Hudson leads a new Super 8 campaign to urge people to #journeysafe!

Oliver - who gets to call Goldie his mum, and Kate his sister - **has just teamed up with Super 8** for an award-winning bobble-head PSA-style campaign to inspire travellers to **#journeysafe** and it sounds like Oliver has plenty of road tripping experience!



HELLO! RECOMMENDS



Tackle dry or dehydrated skin with this one hero product - and it costs less than £20





Sample the World®
Celebrating Global Flavors Close to Home

Uncover North America's Culinary Gems

From vibrant Indian flavors spicing up Santa Barbara to authentic Jamaican comfort food in Minneapolis, you don't have to travel far to experience a taste of the world. Join us on a digital culinary adventure as we uncover incredible global cuisine in major destinations coast to coast. And with a great Ramada by Wyndham hotel always nearby, planning your next foodie-inspired getaway is easier than ever.

Dig In with Kelis

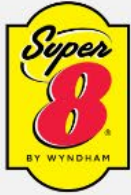
Hosted by Grammy-nominated musician and Le Cordon Bleu-trained chef Kelis—whose love for authentic flavors drives her in the kitchen and her travels—Sample the World goes behind-the-scenes with owners and chefs at top restaurants across the U.S. and Canada, uncovering their stories and sharing the dishes that keep guests coming back for more.

WATCH VIDEO



Kelis, Grammy-nominated musician and Le Cordon Bleu-trained chef

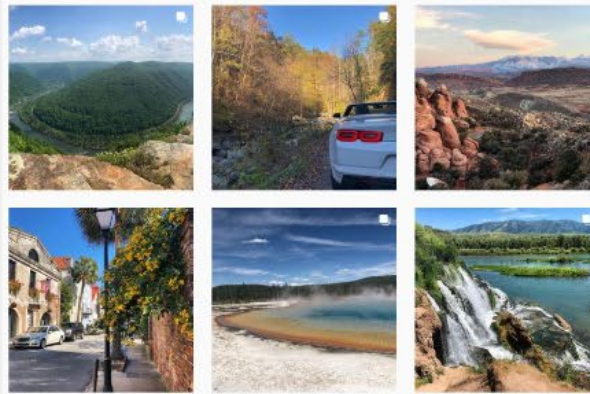




Micro-Influencers



@readysetpto
South Dakota
Super 8 by Wyndham
Custer/Crazy Horse Area



@arctictumbleweed
Connecticut
Super 8 by Wyndham
Cromwell/Middletown



@carlymotoadv
Canada
Super 8 by Wyndham
Peterborough



Digital Advertising: The FTC Regulatory Landscape



Division of Advertising Practices

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

[DATE]

Via Federal Express
[NAME]

Re: Unlawful practices relating to the use of endorsements and testimonials

Dear [NAME]:

I am enclosing the Federal Trade Commission's Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials. Companies use endorsements and testimonials in many forms to advertise and market their products and services, both in traditional and social media, as well as in the form of online reviews. As reflected by the Commission's enforcement actions and other efforts, some companies use these advertising tools in a manner that deceives consumers. We recommend that you carefully review the notice and take any steps necessary to ensure that your company's practices do not violate the law.

The notice of penalty offenses consists of Commission determinations in prior litigated cases that certain practices are deceptive or unfair and are unlawful under Section 5 of the Federal Trade Commission Act. As set forth in more detail in the notice, these acts and practices include: falsely claiming an endorsement by a third party; misrepresenting that an endorser is an actual user, a current user, or a recent user; continuing to use an endorsement without good reason to believe that the endorser continues to subscribe to the views presented; misrepresenting that an endorsement represents the experience, views, or opinions of users or purported users; using an endorsement to make deceptive performance claims; failing to disclose an unexpected material connection with an endorser; and misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience. Note that positive consumer reviews are a type of endorsement, so such reviews can be unlawful, e.g., when they are fake or when a material connection is not adequately disclosed.

Receipt of the notice puts your company on notice that engaging in conduct described therein could subject the company to civil penalties of up to \$43,792 per violation.¹

We request that you distribute copies of the notice of penalty offenses and this letter to each of your subsidiaries that sells or markets products or services to consumers in the United States.

Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials

The Federal Trade Commission has determined that the following acts or practices in the use of endorsements and testimonials are deceptive or unfair and are unlawful under Section 5 of the Federal Trade Commission Act.

- It is an unfair or deceptive trade practice to make claims which represent, expressly or by implication, that a third party has endorsed a product or its performance when such third party has not in fact endorsed such product or its performance.¹
- It is an unfair or deceptive trade practice for an advertiser to misrepresent that an endorsement represents the experience, views, or opinions of users or purported users of the product.²
- It is an unfair or deceptive trade practice to misrepresent an endorser as an actual user, a current user, or a recent user of a product or service.³
- It is an unfair or deceptive trade practice for an advertiser to continue to advertise an endorsement unless the advertiser has good reason to believe that the endorser continues to subscribe to the views presented in the endorsement.⁴
- It is an unfair or deceptive trade practice for an advertiser to use testimonials to make unsubstantiated or otherwise deceptive performance claims even if such testimonials are genuine.⁵
- It is an unfair or deceptive trade practice to fail to disclose a connection between an endorser and the seller of an advertised product or service, if such a connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers.⁶
- It is an unfair or deceptive trade practice to misrepresent explicitly or implicitly through the use of testimonials that the experience described by endorsers of a product or service represents the typical or ordinary experience of users of the product or service.⁷

The FTC's Definition of "Endorsement"

“[A]n endorsement means **any advertising message** (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that **consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser**, even if the views expressed by that party are identical to those of the sponsoring advertiser.”

Summary of FTC Guidance for Endorsements and Testimonials

- “Place it so it’s hard to miss.”
- “Use simple and clear language.”
- “The disclosure should be in the same language as the endorsement itself.”
- “Don’t assume that a platform’s disclosure tool is good enough, but consider using it in addition to your own, good disclosure.”

Section 5 of the FTC Act: Penalty Authority

- The FTC may seek civil penalties if it proves that:
 - the company knew the conduct was unfair or deceptive in violation of the FTC Act; and
 - the FTC had already issued a written decision that such conduct is unfair or deceptive
- To establish the “actual knowledge” required under the first point above, the FTC usually shows that it provided the violator with a copy of the Commission’s determination about the conduct in question.
- Potential civil penalty is **\$43,792** *per violation*

Sample FTC Endorsement Guidelines Certificate

Reference is made to the agreement entered into as of [date](the “Agreement”) between [Company] and [Artist] for the personal services of Artist and the right to use Artist’s approved name, approved image, approved likeness, approved signature, approved performance, approved statements, approved quotes, approved tips, approved testimonials, approved character, approved biographical materials, and other approved indicia of Artist’s identity (collectively, the “Personality Rights”) to promote Company’s Products and Services, as further set forth in the Agreement. In order to ensure Artist’s compliance with the Federal Trade Commission “Guides Concerning the Use of Endorsements and Testimonials in Advertising” (the “FTC Guidelines”), the Artist hereby certifies as of the Effective Date of the Agreement to the following:

1. that any testimonial or endorsement made in any means of mass communication, including, without limitation, newspapers, magazines, radio, television or recognized Internet media outlets (collectively, the “Media Outlets”), by the Artist shall reflect the honest opinions, findings, beliefs, and/or experiences of the Artist;
2. that the Artist shall promptly notify Company if any opinions, findings, beliefs and/or experiences of the Artist change from that which the Artist has previously expressed in any Media Outlet or to Wyndham during the Term of the Agreement; and
3. that in connection with any testimonial or endorsement made in any Media Outlet by the Artist during the Term, the Artist shall affirmatively and conspicuously disclose that Artist is a compensated endorser provided Agency has advised on the specifics of the required disclosures.

Capitalized terms not otherwise defined in this Certificate shall have the meanings set forth in the Agreement.

Artist



readysetpto • Follow

Paid partnership
Super 8 Custer/Crazy Horse Area



readysetpto looking for your next road trip destination? From the Black Hills to the Badlands, South Dakota has so much to offer. I partnered with @super8 and stayed at their location in Custer, which was conveniently-located to all the best sites. Here's some highlights: (save for future planning!)

- Mount Rushmore: get there before 9am to avoid the crowds.
- Crazy Horse Memorial: it's even impressive viewing from the road if you want to save money on the entrance fee
- Custer State Park: Sylvan Lake, Wildlife Loop, Needles Highway
- Badlands National Park: Notch Trail, Badlands Loop Road



195 likes

OCTOBER 12, 2021

Add a comment...

Post



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Paid partnership
Super 8 Custer/Crazy Horse Area



"travel guides" highlight.

-
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#visitsouthdakota #partnership
#sponsored #mountrushmore
#badlandsnationalpark #custerstatepark
#exploresouthdakota #roadtrip

28w



beccaskinner • Follow
Paid partnership with [travelodge](#)

beccaskinner I'm so excited to finally share this video collaboration with [@travelodge](#) and [@yellowstonenps](#). We got to highlight some of my favorite parts of my backyard, talk about conservation and visit my favorite local shops and eateries in Gardiner and emigrant, MT. #GoLocal #partner

132w

davidhcrawford Duuuuuude Gardiner fuckin' rules! Was there in '03 and rolled in to town super late on a road trip with my brother and uncle. There was a pizza spot that was closing in ~5m and we begged them to stay open. They did and we made it worth their while. It was the

8,117 views

OCTOBER 14, 2019

Add a comment... Post



vagabrothers • Follow
Taos, New Mexico

From the old Spanish capital of Santa Fe to the oldest continuously inhabited settlement in North America - the Taos Pueblo.

It's a wild ride through some of the most beautiful country in the USA, and definitely some of the most culturally diverse.

Huge shoutout to our road trip companion [@Super8](#) by Wyndham for giving us a great place to stay on the road and making this film possible!

Check the video link in our bio and story!

#seeyouontheroad #super8_partner #ad #roadtrip

3,029 likes

JULY 13, 2019

Add a comment... Post

THANK YOU!