

Rules? What Rules?

How To Use The Rules On Truth In Advertising To Your Advantage,
Enhancing Your Credibility And Boosting Your Sales

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[Head's Up - A Copywriter's Journal](#)

Presented by: jl scott, Director of [iCop™](#)

Introduction

"What do yah mean rules? This is the Internet. I can do or write anything I want."

Think this way and you'd better have a tooth brush in your back pocket, because you could be off to the big house. Perhaps, not literally, but after your business is shut down and you get to start over, hopefully you'll still have a few friends.

In May, 2003, the **United States Federal Trade Commission took action**, giving notice to all and sundry who market online, the Internet is not lawless. The rules apply not just to the 'big fish' like AOL and Microsoft, but also to the minnows, like you and me.

When the action heats up again this fall, **look for continued pursuit of the bad guys**. Don't want to get caught up in the net? Well then, listen up.

Besides, despite the disdain for the FTC in some circles, the rules you and I are going to talk about, when used properly can only enhance your business, improving your credibility with your visitors and customers.

"What does this mean for you?"

Why more sales, of course!

How About You And I Take A Quick Tour?

When you begin marketing your business, you want to satisfy yourself everything is on the up and up.

- * Are you collecting other peoples' private information? Do you have a privacy policy? Does the service you are using to store this data have a privacy policy?
- * When you write your own copy and make a claim, can you support the claim? Does your site have the appropriate disclaimer? How can you use the truth to your advantage?
- * What about testimonials? Do you know the rules? And, how can you make these rules work for you?
- * And how about the word "FREE?" What special rules apply and can you turn these rules to your advantage?

Now, do not get upset. As you and I get into it, you will find the information you need to know is fairly straightforward. (I say fairly, because at times the FTC legal and bureaucratic jargon can get pretty thick.)

Don't live in the United States? As you likely do business in America, you will want to be familiar with the relevant rules.

Why? Well, on June 17, 2003, the FTC announced:

[FTC Joins International Law Enforcers in Announcing Newly Developed Cross-Border Fraud Guidelines](#)

Guidelines Will Enhance Global Efforts to Combat Growing Cross-border Fraud

The relevant paper issued by the Organization for Economic Co-Operation and Development (OECD) is **[OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders](#)**

(This will open a PDF document in your browser. By the way, what an exciting title. I think the OECD needs some help with writing headlines.)

Essentially, due to this initiative, when involved in the American market place, you want to at least have a working knowledge of the American online marketing rules.

How come? With the pre-eminent position of the United States, if you want to play in America, you get to play by American rules.

To gain an understanding of what you need to know, you will want to read these publications by the FTC:

[A Business Checklist for Direct Marketers](#)

[Advertising and Marketing on The Internet, The Rules of The Road](#)

[DotCom Disclosures: Information About Online Advertising](#)

[Frequently Asked Advertising Questions: A Guide for Small Business](#)

Let's Get Down And Learn How To Make The Rules Work For You -

Part 1 – Privacy Statements

Unfortunately, reading a rule book can often be rather dry stuff. But, sometimes you will find little gems, hidden among the bushes. When you do, pick up the wisdom you can gain and apply it to your business.

All right, enough of my musings.

Everyone tells you, build a marketing list and use the power of opt in email marketing to your advantage. All this is wonderful guidance, but some people may ask:

"Why should I give you my name and email address? You might just sell it to somebody and who knows what messages will end up in my e-mail box."

How can you overcome your customer's concern? Simple. Have a privacy policy and live by it. A policy, you say, but don't I just need to say, "I will hold your contact information in strict confidence."

True, this simple statement is a good start. But are you really holding your subscriber or customer's contact information in confidence when you use someone else to store and process your data?

"But wait a minute, I have my auto response and list management script, which I paid for and installed, on my own web site." Sure and do you own the servers, or are you renting space from another company?

And, when someone buys something from you, do you store your customer's credit card information, or do you share a security certificate with your Internet Service Provider or another company, using their secure 'shopping cart' to carry out the process of collecting and processing the information, allowing you to get paid?

What about when your visitor just visits? What steps do you or the web host you use take on your behalf to collect your visitor's information through the use of cookies?

'Okay,' you say, "I give up, lay it on me."

Some people may not care. But most people are concerned, and it makes good business sense to give the people you deal with some peace of mind.

How? By setting up a privacy policy and making sure the third party vendors you use to support your business will also respect your

customer's, subscriber's or visitor's privacy. This helps to establish your credibility, which is all part of the process.

I have prepared a list of items you will want to consider covering in your privacy policy. In essence, **you will want to tell your potential subscriber or customer:**

- * You will not sell or rent their information. (Yep, you will die and go to heaven before you give it out.)
- * Your subscriber or customer understands, by giving you their information, he (or she) is consenting to receiving your e-zine, along with offers and specials from time to time. (Hmm, I can hear you saying, "Yep, this is good.")
- * At your subscriber's or customer's request, he (or she) may delete their information from your records and you will allow them to correct any errors in your records.
- * And, you will comply with the rules in dealing with their information.

What do the rules say?

In essence:

- * You can't sell or rent someone's information without their consent. Before using the information for some other purpose, like sending your subscriber or customer your e-zine or an offer, you need his (or her consent).
- * You have to allow your subscriber or customer reasonable access to correct any inaccuracies and to delete the information from your records at their request.
- * You have to ensure the information is stored securely; and
- * When the State, with the appropriate legal papers comes looking for the information, you have to give it to the State, chop, chop, lickity split.
- * Also, since a contract with a minor is not binding, you can't play with minors without parental consent and agreement.

When you use a third party to store your data, the situation is a bit more complex. But in essence, **the third party has to agree with you:**

- * Not to rent or sell your information to another party.

- * At a minimum to allow you reasonable access to correct any inaccuracies in your subscribers or customers information.
- * To delete your, or your subscribers or customers, data from their records upon request.
- * And, ensure the data is stored securely.

You can then turn around and say to your people; "Hey I use Big Jones Auto Responder, List Management and Data Processing Services. Big Jones has agreed with me to do all these things and I am giving you the benefit of my rights with Big Jones."

This way, when anything goes wrong, besides the lawyers having a field day, you get to look to Big Jones for cover. How nice. Well, heck, you are paying Big Jones, so it's the least he can do for you.

Was Big Jones not able to give you the assurances you want? Find someone else!

You also need to have a full statement of your privacy policy on your site, (which reminds me.)

(Further on, when you and I look at 'disclaimers' - a nice word for "Yes, I did say that, but to be totally honest, what I told you was an exceptional result and you will likely not do as well," - I will tell you where you want to place your privacy policy and disclaimer on your web site.)

As to cookies, were you using cookies to track your visitors, you want to include the following information in your privacy policy, telling your visitor:

- * Yes, you do use cookies to track your visitors.
- * You only use the information for your own purposes and will not rent or sell the information to a third party.
- * What a cookie is, what type of information is collected, the information is stored securely, and why you collect it: to relieve your visitor of any fears.
- * When the State comes calling, with the right papers, you will hand over any information you have to the State, saying: "Yes sir, yes sir, three bags full, sir."

(I know, somewhat repetitious, but heck, you want to know everything, right?)

In the United States there is no Federal legislation directly dealing with online privacy for adults, although there is for children. At present, in some respects the online industry is self-regulating, there being a mish mash of constitutional protections, state and federal legislation.

The rules I have stated reflect the FTC's position, which is the best practice, and it simply makes good business sense to follow this practice. Why? Two reasons. In following these practices, you enhance your credibility (which can only result in more subscribers and sales) and were it to come down to push versus shove this is where you will likely end up anyway.

For a better understanding of the rules, along with some of the related issues, you may wish to read these FTC publications:

[Online Privacy, a Report to Congress, 1998](#)

(As this is a PDF document; you must have Adobe Acrobat Reader on your machine before you open this file)

[Privacy Online: Fair Information Practices in the Electronic Marketplace, 2000](#)

(This also is a PDF document)

[Privacy Online: Fair Information Practices in the Electronic Marketplace, 2000, Appendix D](#)

(Appendix D is an html document)

These reports are fair bed side reading, but unfortunately there are no pictures. Sorry, folks. Although there are some graphs and diagrams.

As to the rules dealing with children, the FTC has issued a short paper called:

[How to Comply With The Children's Online Privacy Protection Rule](#)

This is also a useful read.

Part 2 - Using Specific Claims

Want To Use Specific Claims? Now You Can Without Fear.

Claude Hopkins, in his book 'Scientific Advertising' (Chapter 7, 'Being Specific'), tells you:

"Platitudes and generalities roll off the human understanding like water from a duck. They leave no impression whatever."

Further on in Chapter 7, 'Being Specific,' you find this statement by the author:

"But a man who makes a specific claim is either telling the truth or a lie. People do not expect an advertiser to lie. They know that he can't lie in the best mediums. The growing respect in advertising has largely come through a growing regard for its truth. So a definite statement is usually accepted. Actual figures are not generally discounted. Specific facts, when stated, have their full weight and effect."

Unfortunately, all too often in online Marketing, the use of specifics, especially in income claims has been abused, so when you see this kind of claim, you often feel the material is really saying:

"Hey 'read' all about it - make your fortune here ..."

This results in the copy having a carnival or circus act atmosphere, instead of being a genuine effort to market a product or service.

How to take advantage of the sage guidance of Mr. Hopkins, while avoiding the pitfalls, in making an income or performance claim?

In doing so, you must also be aware, problems can arise when through your copy, you imply your customer, using your methods can make the same sort of income, or have the same resulting performance.

Here is a short check list to keep in mind when making a claim to ensure FTC compliance:

- * The claim, or implied claim must be true, and ...
- * You must have supporting data in hand to verify your direct or implied claims. The data must be of a nature to satisfy objective analysis by independent experts.

This means, you can't say, "Apply the steps in the Gold Bars course and you too can earn \$5,000 a month," unless you can show the claim is true and you have the proof.

But why not use the rules to your advantage, while being specific, telling your story and using candor?

Here is a quick example:

"With the Gold Bars course, in 9 easy steps you will learn how to trade on both sides of the market. With these methods you can dramatically increase your earnings, generating returns between 112% to 217%.

...

"Before writing this course, I applied the steps and have been able to generate returns of over 357% and here is the proof:

...

"Now, I can't guarantee you will achieve these results, no one can.

"Your results will depend on how you apply the steps in this course. Also, other factors may come into play over which I have no control, so your results may well vary from mine.

"From previous results, most people who take this course and properly apply the steps, generate increased returns, with average rates of return being between 112% to 217%.

"There have also been some exceptional results, where people have actually done better than me.

"However, you must understand. You may not make any money at all and in fact you may loose money even after applying the 9 steps in my course."

In these statements, you have made the claim, while telling your reader in essence:

"I can substantiate my claims. But, you may not make any money, or get the same level of performance. The actual amount you make, or the performance levels you achieve will depend on your efforts and other factors over which I have no control."

Income claims are one problem area

To be certain your customer understands both the potential upside and the risks, even though it might cost you some sales, I would set up the order page so the customer has to acknowledge he (or she) has read and understands in essence:

"In ordering this product, you understand although the potential benefits involved are great, there are risks involved. The investments covered in the course are of a speculative nature. You should not invest any money you can not afford to lose."

Don't make the print so small no one can read it, or the disclaimer so long, no one will bother reading it. Use clear English and, where possible, the active tense.

Were it me, I would rather have 5 customers who will become long term customers and gladly recommend me to others, then 10 customers, 8 of whom are ultimately dissatisfied and tell others not to do business with that crook.

This way, you have met your obligations, while showing your visitor you are thoughtful and professional, using candor to enhance your credibility. And, **candor is a trigger you can use to get more sales.**

Of course, you may have existing copy, which you don't want to tamper with, perhaps because the copy has been successful in generating the results you want.

There are a number of options

Place the disclaimer on your sales page, or have a link to the disclaimer directly beneath the order or subscribe button, with the line:

"Important Consumer Information" - in red - with this statement being a live link.

When your customer uses the link, a new window opens containing the relevant statements, being your disclaimer and privacy policy.

Of course, a disclaimer can't protect you from a lie.

As references, and to give you a better understanding of the relevant principles, take some time and read these papers published by the FTC:

[Advertising and Marketing on The Internet, The Rules of The Road](#)

[Dot Com Disclosures: Information About Online Advertising](#)

Now, in my view were you to have a question or concern, you will want to consult with competent counsel.

Of course, you can buy a self help product and do it yourself. You can find a good selection of choices by doing some in depth searches using Google.

Try a key word search, using 'Privacy Policy' and then do a separate search using 'Disclaimer.' You will find useful examples of policy statements and disclaimers, (remember you can't copy anyone's work without their permission), along with listings of the self help vendors marketing their services.

Remember, 'tell the truth, don't deceive the consumer and be able to substantiate your claims,' which only makes good business sense.

Think of it this way, when setting up your privacy policy and disclaimer, "Do unto others as you would have them do unto you." The golden rule still applies to this day, even on the Internet.

Part 3 - For Publishers Running E-Zine Ads

Hey, Before You Run That Ad In Your E-Zine, Check It Out First!

Congratulations. You have been running your e-zine for a while, built up your subscriber list and now decide to start accepting paid advertising.

Perhaps, in the interim, to attract subscribers, you have been running their ads at no cost. Or, you have been participating in ad swaps to help build up your list.

Great. Now, do you have any obligations? Well, let's see ...

Do you remember the Coral Calcium case, back in June, 2003 where the FTC wrote a note to all of the affiliates, or program members, telling them in essence, your web site has false claims concerning the ability of Coral Calcium to deal with cancer? By this notice, you are given 7 days to remove these claims from your web site or else.

Don't know what I am talking about? On June 10, 2003, the FTC issued a press release:

[FTC and FDA Take New Actions in Fight Against Deceptive Marketing](#)

FTC Charges Marketers of Coral Calcium Supreme Dietary Supplement and a Pain-Relief Product With Making False and Unsubstantiated Claims

Included in the press release is a note called:

Electronic Mail Message to Internet Advertisers of Coral Calcium Products: Notice of Potential Illegal Marketing of Products to Treat or Cure Cancer and/or Other Diseases: Immediate Action Required

[Text of Message to Internet Advertisers](#)

This notice sent shivers up the spines of people who were advertising Coral Calcium Products (i.e. program members and others).

Okay, here is the skinny on this one:

"Third parties ... are responsible for reviewing the information used to substantiate ad claims. They may not simply rely on an advertiser's assurance that the claims are substantiated. In determining whether ... should be held liable, the FTC looks at the extent of ... participation in the preparation of the challenged ad, and whether ... knew or should have known that the ad included false or deceptive claims."

This statement comes from the guide prepared by the FTC called:

[Advertising and Marketing on the Internet: Rules of the Road](#)

You may be saying, but I am just the publisher. True, but given the actions taken by the FTC in the Coral Calcium case, you will want to consider your position as a publisher of an e-zine.

What does all this mean?

As a publisher, you have an obligation not to put to your readers claims which you knew or ought to have known were false or deceptive.

Now, you may be saying, "But hey, what the heck does the FTC mean by, 'ought to have known?'"

In the case of a publisher, to my understanding, 'Ought to have known' is the standard or duty of care you have to exercise in reviewing advertising before allowing it to be published.

In essence, in applying this test, you must ask the question:

"Were you to have taken the steps a reasonably prudent publisher would take in reviewing the ad, would the reasonably prudent publisher have run the advertisement?"

By now, you are probably saying, "Aha, now you are starting to talk in double talk. Besides, I am just a one man shop, running a small e-zine with a tiny subscription list."

True, but to get from small to big, you want to be a professional. And I repeat, as a professional publisher you have certain obligations to your readers.

How best to turn this potential problem to your advantage?

Here are some guidelines:

- * Reserve the right to refuse to publish a particular ad.
- * Apply the old smell test. Does the ad smell "fishy?" Does it sound too good to be true? Well then it usually is, and you may want to exercise your discretion, declining to run the ad, or at least get in touch with your subscriber or advertiser and say, "Look, can you help me out here ...?"
- * Keep abreast of the problem areas by checking into the FTC site to know what is on their 'hot list.' Presently the problem areas are "extravagant performance claims, health or weight loss promises, and earnings guarantees."

Running an ad where the advertiser says, for example, 'You too can make \$25,000 a month in the next 30 days' - 'Lose 30 lbs overnight using QRS' - 'Buy XYZ and save yourself from cancer' or 'Increase your sales by 420% in less than 20 minutes' are all potentially problems.

Place a disclaimer at the end of your ad run. It does not have to be fancy. You will want to tell your readers in essence:

"I can't vouch for anything said in these ads. Does it sound too good to be true? Well then, it probably is.

When soliciting advertising, why not tell your readers in essence:

As your publisher, I have a duty to all my readers. Before submitting your ad, check out the FTC guidelines referenced in "Advertising and Marketing on The Internet, The Rules of The Road" which you can find at the [FTC's site](#) and when making a claim, remember you have to be able to substantiate the claim. Were I to think something does not add up, I can refuse to run an ad.

And, were you to decide not to run an ad, do the person a favor and tell him (or her) why you decided not to run the ad, giving the person an opportunity where appropriate to correct the problem.

By applying these standards, you can help to restore your readers' faith in the advertising run in your e-zine. This will help you and your readers. Why? Because, it is advertising which helps to pay the bills.

Part 4 - Writing Your Own Copy

Doing Your Homework Can Pay Big Dividends When Writing Your Own Copy!

Great, you took the home study course in copywriting and now you decide to set up shop as a copywriter. Or perhaps, you decide to write your own copy for the products or services you are marketing as an affiliate, or the business opportunity you think is the cat's meow.

Hey, this is good stuff. I mean my hat goes off to you. Why? Because it takes courage, gumption, ambition, drive and desire to set up your own business.

Now, when writing your own copy, remember what you and I discussed above:

- * The claims must be true; and,
- * You must be able to support your claims.

As a copywriter, when you are writing copy for your client, you will want to see and review the data which supports the claims for yourself. Check it out. Can the product or service do what the client claims?

In reality, these are the same questions you have to ask when writing your own copy for the products or services you are marketing as an affiliate, or the glorious business opportunity which is going to help you retire at 55 instead of at 75.

What does this mean for you?

Let me give you an example. You are asked to write an auto-responder series for a membership site. A new member signs up for the service on a trial basis. The purpose of the auto-responder series is to help persuade the new member, he (or she) should continue on after the trial period was finished.

Now, you could simply copy and paste from all the existing copy material in the site and then re-write it, slapping together the copy in no time flat.

But in doing so, you would simply be repeating a bunch of existing claims. Perhaps as a short cut, you can write the owner, saying:

"You make the following claims:

...

in the copy on your web site.

Can you please confirm for me the truth of these claims?"

Of course the owner will simply write back and say, "Yep, it is all true."

Instead, you want to crawl through every tool, resource and bonus. This requires you to check out all the tools. Make sure each tool worked as it was supposed to work. You also review all the resources referenced in the site. And you go through all the bonuses to make sure everything is in order.

In doing this, besides perhaps learning a few things, you are able to verify for you own benefit whether the owner's claims were correct or not. Then, when it comes time to write the auto-responder series, you are able to use all this knowledge to produce a better copy product for the client's benefit, and as a result the client truly got his money's worth and so will his customers.

The same goes when you are marketing someone else's product or service. Have you used the product or service yourself, or are you just parroting the copy on the web site, or in the company's sales material?

When you use the product or service yourself, guess what happens? You are either going to conclude, this is really great, or you are going to conclude, this stuff is garbage, I can't market this to someone else.

When you 'fall in love' with the product you are marketing, does your copy show your enthusiasm? You bet. And do you think this enthusiasm is infectious? Of course it is. And why do people buy the widget you are marketing which has the twist and finagle as added benefits, instead of the competitor's widget product for \$50.00 less with just the finagle as an add on? Emotion.

So, by simply following the rules and verifying everything for yourself, what have you done?

Proven you are a professional by doing your homework, which in turn allows you to write better copy. And better copy results in more sales.

How about another example?

Last winter, you signed up for an educational program. When you enrolled, the product was still in development. So, even though the program owners were pushing people to hit the bricks, you declined. Why? Because, everything was not in place and you did not feel comfortable in marketing something where it was a bit iffy as to whether the claims being made could be met.

However, once everything was in place, and you had personally gone through the service, you are able to write your own copy promoting the service and in doing so, you can explain in glowing and enthusiastic detail, how this service has helped you and how it can benefit your potential customers. Does this make a difference? Of course it will.

The point of all this?

Simple. Review your client's or supplier's claims. Make sure they are true and can be supported. Use the product yourself. Do your homework. Not only will you protect yourself, but at the same time, your advertising material will benefit.

Let me leave you with this thought from Chapter 11 of "Scientific Advertising" by Claude Hopkins:

"An ad-writer, to have a chance at success, must gain full information on his subject. The library of an ad agency should have books on every line that calls for research. A painstaking advertising man will often read for weeks on some problem which comes up. Perhaps in many volumes he will find few facts to use. But some one fact may be the keystone of success.

"This writer has just completed an enormous amount of reading, medical and otherwise, on coffee. This is to advertise a coffee without caffeine. One scientific article out of a thousand perused gave the keynote for that campaign. It was the fact that caffeine stimulation comes two hours after drinking. So the immediate bracing effects which people seek from coffee do not come from the caffeine. Removing caffeine does not remove the kick. It does not modify coffees delights, for caffeine is tasteless and odorless."

Now onwards and upwards ...

Using Testimonials So Others Can Say "Wow, What A Great Product!"

People will tell you, you need to have testimonials in your web copy to make your web site a success.

(As an aside there are other methods you can use besides testimonials, such as a story, or quotations from relevant articles.)

The question is, how can you get testimonials for your product or service prior to making any sales, or having subscribers to your newsletter?

Two possible approaches:

* Use the various marketing forums to solicit testimonials from people, offering to send members a copy of your product for review. (You will want to limit the number of products you will distribute.)

Were you to also tell members, "Hey and if you to give me a great testimonial, I will certainly consider using it on my site, along with a link to your site," your enthusiasm may present a problem down the road.

* Approach the people you want to Joint Venture with in marketing your product by first offering to send him (or her) a copy of your product for review. Depending on the quality of your product, this will likely generate a number of testimonials.

Now, once you get some testimonials in hand, what next?

* Well, to use the testimonial in your advertising "it must truthfully represent the experience or opinion of the endorser."

This means, you can't say to someone, "Give me a glowing endorsement and I will post your picture, along with the endorsement and a link to your site."

Some where in your letter, or the message posted in the forum, you are going to have to work in some language in which in essence you state:

"I would really appreciate your honest comment on my new product, based on your using it," (the post to the forum) or "... your opinion as a leading online marketer ..." (in your letter to your potential joint venture partners).

Also, any statement made in the testimonial must not contain a statement which you can't support.

Were someone to say, "Wow, using this product, I increased my bicep size by 50% in two days," and this is not possible, guess what ... into the garbage. Next, please.

To put it in FTC jargon:

"Endorsements must always reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, they may not contain any representations which would be deceptive, or could not be substantiated if made directly by the advertiser."

(By the way, in FTC land, endorsement and testimonial are interchangeable.)

There are two types of testimonials:

- * A testimonial given by an expert or well known personality and ...
- * A testimonial given by a consumer (which can be either solicited or unsolicited)

Using the two examples I gave of getting testimonials before you start marketing your product or service, since you have a connection with the people giving you testimonials, do you have to disclose this in your web copy? It depends.

* When the person is an expert or well known personality, it is generally understood (at least in the FTC's eyes), an expert or well known personality will receive some form of benefit, you don't need to disclose this on your web site.

To paraphrase the FTC's position:

Where you have a connection with your endorser (i.e. he (or she) is your joint venture partner, or you offered to copy and paste the testimonial on your web site with your endorser's link and photograph in exchange for a favorable testimonial) and "this connection is not reasonably expected to be known by visitors to your web site," this is considered 'material' in FTC jargon and you must disclose this fact on your web site.

Hmm ... so what is meant by "not reasonably expected to be known by visitors to your web site?"

Well, as I said above, in the minds of the FTC, people generally understand a celebrity is paid to endorse a product, and an expert in a particular field does not give freely of his (or her) time.

In your web copy, were you to state something like:

"Here is what some of the leading experts in online marketing have to say about this product:"

You may be ok. I say maybe, because:

* The expert must have the necessary qualifications allowing you to call the person an expert. (Self-anointed does not cut it.)

According to the FTC guidelines:

"An expert is an individual ... possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals."

Also, remember I said the testimonial must be truthful. In reviewing the product, the expert can't simply breathe on the product and give a 'glowing' opinion. (Hey, don't kid yourself, this goes on. Although, it is the exception rather than the rule.) The testimonial has to fall within your expert's area of expertise. Your expert must review and properly evaluate the product before giving the testimonial.

To put it in 'FTC-ese':

"The expert must actually review the product, applying his (or her) expertise in evaluating product features or characteristics with respect to which he is expert and which are both relevant to an ordinary consumer's use of or experience with the product and also are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement."

This is why it is important in your cover letter to your potential joint venture partners to politely ask for an honest comment based upon review. In doing this you protect both yourself and your potential joint venture partner and you enhance the reliability and credibility of any testimonials you do receive. The result? More sales.

What about consumer testimonials?

* You must disclose when you have a "material relationship."

When you give away products to members of a private marketing forum, and in your marketing material you use the testimonials you collect, and these people are not experts, nor well known personalities, but simply consumers, then you have to disclose what you did to get the endorsements in your copy.

* Consumer testimonials about a key benefit of your product or service are generally understood to mean the endorser's experience represents what consumers will generally achieve in using your product or service. Obviously it is understood the actual benefit you get may be different from the next person's.

* Unless you can support this understanding, you will have to disclose on your web site either: (i) what experience the typical consumer will have in using your product or service; or (ii) disclose the consumer's testimonial is an exceptional circumstance.

How about two examples to give meat to those bones:

You are introducing a new product making it easier for people to learn how to write in HTML. You get a bunch of testimonials from members of the forum.

In essence, the testimonials all state your product has really helped the endorsers in writing HTML code for their web sites making the process quick and easy. Since this is the intended result of your product, although you have to disclose how you gathered the testimonials, no additional disclosure is required.

You are writing the copy for a business opportunity. In writing the copy for the site, the program manager gives you a number of testimonials from high earners, all telling about their wonderful experience, saying how easy it was to quickly build up a team and generate a five figure monthly income. Of course, these people don't say, "I had a mailing list of 50,000 people," or, "Before I joined xyz program, I already had a team of over 1,000 people."

These experiences are outside the norm. (Hey, managing a small city of people through your mailing list is a bit off the wall.) Were you to use these testimonials, you will have to disclose the experience of these individuals is exceptional, and does not reflect average results.

Let's recap the key points.

* The testimonial must be the honest opinion of your endorser. You must be able to support any claims made in the testimonial.

* In soliciting testimonials from consumers, and you give a benefit to get the testimonial, you have to disclose how you solicited the testimonial.

You can deal with this up front. When seeking testimonials from members of a private members forum, tell people you are running a market survey. You are looking for people's honest opinion about the key attributes of your new HTML product. Tell people, when requesting the product, to provide you with their name, telephone number, mailing address, email address, url and one line signature file.

Inform people you want this information so you can get in touch with them and find out their honest opinion about the product.

Then when you post any testimonials on your web site, you can include a link to a pop up explaining exactly how you collected the testimonials, including the questions you asked in the follow up interview. This way, by using candor, you enhance the credibility of your testimonials.

- * When using testimonials from consumers who do not represent the average person's experience, you have to disclose this.
- * When soliciting testimonials from experts, you want to ensure the expert is an expert, (a rose is a rose), and he (or she) actually reviewed the product before giving you the testimonial.

Again, you can use candor as a weapon, to increase your sales.

The relevant FTC guideline is called [**FTC Guides Concerning Use of Endorsement and Testimonials in Advertising**](#). Although the examples given in the Guide concern television advertising, you and I both know, based on the FTC staff paper called "Dot Com Disclosures: Information About Online Advertising" these rules also apply to the online marketing arena.

(You can read the guide forward and then you may want to read it backward. Let's just say the person who wrote this one knew how to obscure the meaning of the English language.)

Ready to move forward? Good.

Part 5 - Using the Power of "Free"

Using The Power Of "Free," As In "Come and Get It, It's Free"

Hey it's magic word time. The one word which is so powerful, it usually causes people to stop dead in their tracks and stare, (even the most cynical among us will make some wisecrack), while causing most ISP filters to go tilt and turn sideways.

* You're building a mailing list. You decide to give away a sample of your product using the magic word, "FREE."

"Subscribe to the Golden e-zine and as a bonus receive the Gold Bars Report showing you how anyone can triple their money in 30 days using these secret investment methods, a value of \$67.00."

The value of the gift is something you decided upon, having created the report yourself. How can you do this and make the rules work for you?

* Or you decide to entice more readers with the statement:

"Subscribe to The Marketers e-zine, a \$195 value."

The value is something you want to set. Presently you are not charging for people to subscribe. What to do to make it happen?

* You decide to introduce a new product into the market. You are going to charge \$15.95 a month for membership to your private member's site called The Golden Membership Site, offering exclusive Internet marketing guidance and you decide to include a series of bonuses. After listing all the bonuses, you state:

"These 4 Additional Bonuses equal a \$574.95 value if purchased separately, but they are all yours absolutely ..."

Is there anything special you need to do to enhance your offer, making the rules work for you, or do you need to do something to step around the rules?

* You decide to market the semi-exclusive right to use your 'special' buyers only mailing list. You decide to call your new product "The Diamond Mailing List."

In putting together your copy, you decide to include a number of bonuses. Among the bonuses, you want to include is an e-book which cost you nothing. Others can also get the same e-book for nothing, simply by signing up for a particular affiliate program. You have the right to give away the e-book or sell it.

In your list of bonuses you want to state this e-book has:

"A value of \$47.95."

Can you do this, and what must you do to allow you to separate the price of the bonuses from the price of subscribing to your new service in your copy and, how can you use this to get more subscribers?

Before sprinkling holy water, repeating abracadabra three times and saying presto, an understanding of the rules might help.

* You and I both know using the word "FREE" has magical powers. People are attracted like moths to the flame. Even though you are skeptical, see this word and it always causes you to look twice.

* Because of its power, you have to be careful in how you use this word, to avoid misleading people.

* Except when introducing a new product, people generally understand when you sprinkle gold dust and use the word "Free;" you have to buy one product at the regular price to get the other product.

(Regular price means the normal price you have charged, and sold the product or service for, over the previous 30 days, before introducing the new offer.)

* It must be a "limited time offer." The essence is the time must be no more than 6 months in a 12 month period. Decide to run the offer more than once in a 12 month period? You can only run the offer for 3 times. And the total volume of sales generated by the "Free" offer cannot exceed 50% of your total sales volume for the product you intend to offer as free, in the previous 12 month period.

This last sentence is a bit rough. So how about you and I look at an example.

You are selling an e-book "The 17 Best Ways To Save Your Marriage" (17 Best Ways) for \$17.95 each.

A competing product comes on the market, and you don't want to lose market share.

You decide to up the ante and offer this e-book and as a free bonus, your other product, "10 Easy Ways To Please Your Lover Without Having Sex" (10 Easy Ways).

Prior to setting up the special, the sales of "10 Easy Ways" are running at 150 units a month (or 900 a year). This e-book is also priced at \$17.95.

As "10 Easy Ways" is going to be the free item in the offer, your total sales for the "Free" offer are limited by 50% of the sales of "10 Easy Ways" in the previous 12 months or 450 units.

You decide to run the special over 6 months, but you want to run it over a number of different periods.

This is fine, as long as you separate each time frame you decide to offer "17 Best Ways" with "10 Easy Ways" as a bonus by at least 30 days and after each special is

over you start selling "10 Easy Ways" again as a separate item at the regular selling price of \$17.95.

Also, the total number of units you can sell of "17 Best Ways", with "10 Easy Ways" as a bonus is 450 units.

Any conditions concerning the offer have to be included and shown with the offer.

This can present a bit of a problem for online marketers. Let's say you are selling your e-book "10 Steps To Writing Winning Headlines" at \$19.95 and you decide to throw in "Headline Creator Pro" as bonus.

(By the way, to do this, you have to buy the master resale rights. As part of your license agreement, you have to state the product has a value of \$49.00.)

In putting together a headline for your marketing banner you write for example:

"Want to write headlines like a pro? For a limited time, now you can with your Free copy of Headline Creator Pro, a \$49.00 value.

"Of course there is a catch. To get Headline Creator Pro, you have to buy my e-book '10 Steps To Writing Winning Headlines' at \$19.95 within the time limit. This condition of the offer must be clearly spelled out upon the person using the banner and coming to my sales page."

This whole business of 'stated' value can create another problem ...

My understanding is where the supplier stipulates a value, but this is not the 'regular' price - even as the supplier marketing the product at a discount, you have to be careful.

Otherwise the consumer may think he (or she) is getting a better bargain than what is the true reality.

The way around this problem is to state:

"Want to write headlines like a pro? For a limited time, now you can with your Free copy of Headline Creator Pro, having a \$49.00 list price ..."

Notice the insertion of the word "list price." This tells the consumer the value you are quoting is the supplier's list price as opposed to the regular price or market price.

For other examples of what is and is not acceptable disclosure of your terms and conditions, you can review the examples given in "Dot Com Disclosures: Information About Online Advertising." In my view this is an excellent read and you will not end up wanting to drink half a pint of the hard stuff by the time you are finished just to clear your head.

When using the golden word "Free" to introduce a new product or service an additional set of rules apply.

Let me give you an example:

"Sign up for John Smith's Marketing Service, regularly priced at \$19.95 and John will throw in his new e-book, '21 Steps To Writing Winning Copy,' a \$57.95 value, absolutely Free."

The problem is John's e-book is new to the market, who knows what it is worth? And, it could be said you are misleading people by suggesting it is usually priced at, or has a value of, \$57.95.

You can introduce a new product or service in this manner. But the offer has to be for a limited time. And, when the offer expires you have to start marketing the new product at the price you state in the offer.

As you have no previous sales for the new product, the 50% rule does not apply.

So, you could market the new product by saying in essence:

"Get Smith's Marketing Service for only \$19.95 and for a limited time you will also receive Smith's new e-book '21 Steps To Writing Winning Copy,' a \$57.95 value, absolutely Free."

But, were you not intending to offer the new product as a separate item at the stated price, after the limited time expires, you will have to say something like:

"Get Smith's Marketing Service and Smith's new '21 Steps To Writing Winning Copy' for only \$19.95."

Notice you can't reference a separate price for the new product or infer "21 Steps To Writing Winning Copy" is free.

Finally, you can't avoid problems by using language like "gift" - "given without charge" - "bonus" - or similar language conveying the impression that a product or service has the benefit of the special word you and I know so well.

Returning to the examples I gave you at the beginning, how can you use the rules to your advantage in marketing your new product or service?

In the first example, were you wanting to run an offer promoting your e-zine with the bonus of the Golden Report, valued at \$67.00, since your e-zine is free, one way to do this is set up a limited time offer.

(This is not a wise marketing decision. But let's go through the exercise first.)

You might decide to set up the offer so the limit is both a period of time or a new number of subscribers, whichever comes first. You will want to use "fear of loss" as the trigger to get people to subscribe.

Were you to have the records, you could decide to limit the number of new subscriptions to 50% of the total number of new subscribers during the previous 12 months, although there is no requirement for this in the guide when introducing a new product as a "Free" item.

Let's say your total number of new subscribers in the previous 12 months was 900. Half of this is 450. You can then use this as your limit, being the total number of people who can subscribe and get the bonus.

Once you are finished running the free offer, you then have to start marketing the Golden Report at \$67.00.

Now you can rewrite your offer and state in essence:

"Subscribe now to the Golden E-zine and receive our newest report, the Golden Report, showing you how anyone can triple their money in 30 days using these secret investment methods, a value of \$67.00, absolutely free. However, you will want to hurry.

"This offer will only run from August 1 to September 1, 2003, and because this is a very special offer, it is limited to the next 450 people who subscribe to the Golden E-zine. Once this number is reached, this offer will be taken down. Then, the only way you can get the incredible secrets contained in the Golden Report is to pay me \$67.00."

(As I said before, this form of offer relies heavily on fear of loss as a motivator.)

Elsewhere in your copy, you may wish to add something like:

"This is serious folks. To comply with the FTC guide on the word "free," once the magic number is reached, this offer will be withdrawn."

You may even wish to make "the FTC guide on using the word free" a live link, so people can see for themselves you are telling it straight.

I say all this because unfortunately, "free" and "limited time offer" have been badly abused and mangled in some circles of the online community.

Then when you reach 450 new subscribers, or the period expires, whichever ever comes first, take the offer down and put up a sales letter for the Golden Report at \$67.00.

However, it honestly does not make much sense to market a free item with a bonus you intend to subsequently sell as you are downgrading the value of your new product before you start to sell it.

The better choice is to set up a mini course about the secret investment methods and give away this 3 or 7 part course as a reward for subscribing to the Golden E-

zine. You can then make this a standing offer, start marketing the Golden Report and use your mini course as a way of promoting your Golden E-zine and introducing the Golden Report.

In the second example, the problem here is not the guidelines on using the word "free," but whether you can properly state a value. Do you have any data to support your statement a 1 year subscription is worth \$195.00, or any amount? Yes, and were the data valid, then you are okay.

No, then you will want to find out what the market will bear and use this as your value.

How can you create this type of data?

Set up a page to run a survey. Direct traffic to this page. Explain the benefits of subscribing to The Marketers E-Zine. Then ask people what they would be willing to pay for a year's subscription to receive the kind of information they receive with The Marketer's Ezine. In your survey ask the participant, would he (or she) be willing to pay, for example: less than \$47.95 a year, \$47.95 a year, \$97.95 a year, \$147.95 a year, \$197.95 a year, or more than \$197.95 a year to receive this kind of information. (You have to be careful in setting the amounts not to skew the results.)

To induce people to take your survey, you can then offer a reward for participating in the survey.

When the results are in, use the value most people chose as the value for your e-zine and publish the results of your survey, along with the method you used, so people can see how you selected the value for your e-zine. Use candor to strengthen your credibility.

So, when you say:

"Subscribe now to The Marketer's E-Zine, a \$195.00 value."

You can add:

"Want to know how I chose this value? Read this study, called 'Choosing A Value For The Marketers E-Zine.'"

Set up the title to the study as a live link and lay it out for your visitor.

Do you think this will enhance your credibility and drive up your subscription rates?

In the third example, based on the proposal, and to avoid any problems, you will have to make the bonuses a limited time offer. And, once the offer is finished running, market the bonuses as a separate item either individually or as a group at the stated prices.

Were this a problem, then you will have to remove all reference to value in your copy. Also, you will not be able to infer the additional items are free.

This means you will have to include the list of items as simply one of the benefits of being a member, without labeling them as free, gifts, or bonuses.

The marketing solution?

Set up an ordinary membership and a golden membership. Upon paying the ordinary price, you receive a membership. But, by paying the golden price, an extra say \$37.00, you receive your membership which gives you a certain list of benefits and the additional benefits.

Then you can list out the items, stating a value for each one (which you can prove) and go on to state:

"These 4 benefits, a value of \$574.95, (a value you can support with market proof) will cost you only \$37.00 when you become a golden member."

To run this type of standing offer, without debasing the value of the 4 benefits, for yourself and others, you may want to limit subscriptions as a gold member, or 'target' the manner of subscribing to your membership site.

You can do this by striking joint ventures with membership sites offering business tools or resources, and then state on your copy, "If you not referred to this site, you have to apply and be placed on a waiting list."

As to the last example, you will want to simply include the bonus item, without stating your value for the item, since you cannot prove this is a legitimate value for the item. You can conduct a market survey to see whether anyone is selling the item and at what price. This would be the value you use.

You can then either run a limited time offer, or step around the rule, as with the membership site, establish two membership levels, ordinary and Diamond, charging a set up fee for Diamond membership.

You will also want to limit the total number of ordinary and Diamond members to protect the value of your list, so maintaining membership value.

You can then include the items as additional benefits, listing the substantiated values. Then, you can target membership through joint venture arrangements with other marketing membership sites and list owners.

Okay, you don't want to rewrite your offer because of what your competition is doing and, instead, you want to follow existing practices in certain parts of the online market.

All 4 examples as is, give rise to problems.

Why do I say this?

Well in example 1, you are introducing a new product, but you don't have a limited time offer and who knows what the true market value is for your product.

In example 2, you are introducing a new product and you have set a price, but only the market can tell you whether the product has any value or not.

As to example 3, the problem is the guideline states when adding a bonus, you need to make it a limited time offer, which is not the case, since this is a standing offer.

The problem with example 4 is stating a product has a value, when there is no regular price (unless a market survey shows otherwise), and you can get it at no cost.

But, the question then becomes whether the perceived problem is material, and will likely cause significant harm to the consumer?

In all four cases, the consumer can simply discontinue using the service and keep the gifts.

When the FTC comes knocking on your door, after the initial scare, you get to hire a lawyer. Then you have the anxiety, the worry, the distraction and the wasted time and expense. Of course, you may talk yourself out of the situation, but at what cost to you and your business?

The best guidance I can give as an online marketer? Always over-deliver, don't make any obvious untruthful or deceptive statements, set up your privacy policy and disclaimer, deal with customer complaints promptly, and you will be okay.

Two publications by the FTC you may want to check out:

[Guide Concerning Use Of The Word "Free" And Similar Representations](#)

(Read this one standing upside down and it might help with the edification. Another winning example of crystal clear obfuscation.)

[DotCom Disclosures: Information About Online Advertising](#)

(This one is a useful read, being actually written in the English language.)

Well there you have it.

I trust you have found this tutorial of some assistance in learning how to use the FTC Advertising Rules to your advantage in building your credibility and improving your sales.

Now my disclaimer: Although I have a law degree and a working knowledge of the relevant FTC rules, I am a writer, copywriter and marketer, not a lawyer. What I told you in this article is based on my own studies and experience for your information. In using examples, I am not stating, suggesting or implying any actual situation, business, web site or copy is either in compliance or not in compliance with a particular rule. The examples given in this article are only for illustration purposes, to assist you, the reader in understanding the workings of a rule from a marketing perspective, so you can use the rules in your marketing efforts to your advantage, enhancing your credibility and boosting your sales. Nothing else is meant or implied.

Were you to have a question or concern about the application of a particular rule, you will want to consult with competent counsel.

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