

Keeping Your Marketing Pitches Compliant

NAFCU

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Overview and Agenda

- Marketing and Advertising Issues
- Privacy Issues
- Compliance and Legal Risk
- Reputation Risk
- FFIEC
- NCUA Guidance
- Sweepstakes, Promotions & Giveaways
- Font Battles
- FTC Guidance

Background

FFIEC

Social media is defined as a form of interactive online communication where users can generate and share content through text, images, audio, and/or video

Forms of Social Media Content

- Micro-blogging sites (Facebook), Google Plus, MySpace and Twitter
- Forums, blogs, consumer review websites and bulletin boards (Yelp)
- Photo and video sites (Flickr and YouTube)
- Professional networking sites (LinkedIn)
- Virtual worlds (Second Life) and social games

Means and Opportunity

Credit unions can use social media in:

- Advertising and marketing
- Incentives
- Facilitating applications for new accounts
- Inviting feedback from the members
- Enabling and assisting potential members
- Receiving and responding to complaints
- Providing loan pricing

Compliance Risk Management Expectations for Social Media

- Need for a risk management program to identify, measure, monitor and control the risks related to social media
- Components of risk management program should include the following:
 - A governance structure with clear roles and responsibilities for the Board of Directors or Senior Management
 - Policies and procedures

Compliance Risk Management Expectations for Social Media (cont.)

- Components of risk management program should include the following:
 - Risk management process for selecting and managing third-party relationships
 - Employee training program
 - An oversight process for monitoring information posted to social media sites
 - Audit and compliance functions
 - Parameters for providing appropriate reporting to the Board of Directors or Senior Management

Survey Question

Does your credit union have procedures that address how to monitor social media posts?

- Yes
- No

Compliance and Legal Risks

- Truth in Savings Act/Reg DD
- Fair Lending Laws/Equal/Credit Opportunity Act/Fair Housing Act/Reg B
- Truth in Lending Act/Reg Z
- UDAAP
- Deposit Insurance or Share Insurance
- RESPA
- Fair Debt Collection Practices Act

Compliance and Legal Risks (cont.)

- BSA
- Payment systems
- Privacy
- Constant monitoring
- Procedures
 - SPAM Act
 - Children's Online Privacy Protection Act
 - Fair Credit Reporting Act
 - Telephone Consumer Protection Act

Reputation Risk

- Fraud and brand identity issues
- Third-party concerns
- Privacy concerns
- Member complaints and inquiries
- Employee use of social media sites
- Consumer complaints and inquiries

Survey Question

Does your credit union monitor social media posts about the credit union?

- Yes
- No

FFIEC Guidance

- Financial institutions are using social media sites as a tool to generate new business and provide a dynamic environment to interact with consumers
- Financial institutions are expected to manage potential risks through appropriate oversight and control

Compliance and Marketing Guidance by NCUA

- Advertisement regulations
 - An official sign
 - An official statement
- Your ad may not discriminate
- Share account products
 - Truth in Savings
- Lending issues
 - Truth in Lending
 - Open-end credit
 - HELOC

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NCUA Publication – Marketing Tips, Techniques and Tools for Credit Unions with Limited Resources

<http://goo.gl/8K5aRq>

- Marketing Tips and Techniques – page 13
- Marketing Calendar – page 14
- Competition Matrix – page 15

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Survey Question

Does the website of your credit union include the Equal Housing Opportunity sign or logo?

- Yes
- No

Sweepstakes, Promotions and Giveaways

- Sweepstakes – a promotional device where **chance** determines who wins prizes
- Contest – **skill** determines who receives prizes
- Lottery – contributions or payments, usually a small sum of money, for a chance to win something of greater value
- Caution – different rules apply for each

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Sweepstakes Mailings Cannot:

- State that an individual has won a prize unless he has actually won the prize
- Contain a statement inconsistent with the contest rules
- Require the sweepstakes entry to include an order or payment
- State that individuals not purchasing products may be disqualified from future sweepstakes

Sweepstakes Mailings (cont.)

- If in violation of these rules, the Postal Service may seize it
- The mailing's recipient may also sue the sponsor to recover \$500 or the amount of their damages from the mailing
- For serious violations, a sponsor may be fined \$10,000 for each mailing

State Laws

- Equally as important as federal laws
- Under many states' laws, promoters must make disclosures equivalent to or greater than those required under federal law
- Some require sweepstakes promoters to register the promotion in advance

State Laws (cont.)

- Registration - some require sweepstakes promoters to post a bond or pay a fee before holding a sweepstakes
- In many states, sponsors must also maintain a list of sweepstakes winners and make that list available to participants
- Some statutes mandate that a promoter award every prize unless the sweepstakes' rules expressly state that unclaimed prizes will not be awarded

Sweepstakes Checklist

- Ensure no purchase is necessary
- Be aware of, and comply with, the most restrictive state law applicable to a multi-state sweepstakes
- Consider restricting eligibility to less than all states if that strategy is consistent with your business purpose
- Be clear and precise with sweepstakes rules; problems with sweepstakes frequently arise from ambiguities in the sweepstakes rules

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Sweepstakes Checklist (cont.)

- Avoid turning a sweepstakes into a contest
- Award all sweepstakes prizes
- Do not make any misleading or deceptive statements
- Prepare, keep and retain records of the sweepstakes rules and sweepstakes award protocol, and disseminate a winners' list

What is a Font License?

A font license grants the owner the right to use a type face in a specific manner as outlined in the license number. The big takeaway or caveat – every type house or designer has the right to create a license of any type, so you must check the end user license agreement.

Font Rules and Battles

- Have a proper license
- Get special licenses when necessary
- Don't loan fonts to third parties
- Keep fonts in their original form
- Ask questions to be sure

The Font Golden Rules

- Software licenses for fonts are normally purchased
- The license sets out exactly how you may use the font software
- Most licenses do not allow you to copy or distribute font software
- Most licenses allow users to imbed font software in documents

The Font Golden Rules (cont.)

- Most font software publishers will allow users to create static images from font software
- Most publishers will not allow their software to be modified in any way without permission
- The credit union may be liable if you lend or give font software to others without a license

Font Piracy/Font Trolls

- Website domain name
- My Little Pony

FTC Online Disclosure Guidance

- *Contest and Sweepstakes* – if you run a contest or sweepstakes on social media, official rules require some type of disclosure and each entry is the responsibility of the credit union
 - #sweeps is not enough
 - #contest or #sweepstakes is okay

FTC Online Disclosure Guidance (cont.)

- *Character limits* – no excuse to claim character limits prevented you from using appropriate disclosures or hash tags
 - “Sponsored” or “promotion” uses nine characters
 - “Paid ad” uses seven characters
 - Starting a tweet with “ad” or “#ad” takes only three characters

FTC Online Disclosure Guidance (cont.)

- On *streaming events*, viewers can tune in at any time and they could miss a disclosure. There must be multiple periodic disclosures throughout the stream
- *Paid “like” campaigns* are clearly deceptive
- *Employee endorsements and testimonials* – Employers are forbidden from asking or incentivizing employees to post anything on social media that is untrue
- *Video and video endorsements* must contain “clear and conspicuous” disclosures

FTC and Online Advertising Guidance/Compliance

- All media applications including the mobile marketplace
- The key fundamental requirement is a prohibition on “unfair or deceptive acts or practices”
- Encouraged to incorporate relevant limitations and qualifying information into the document rather than a separate disclosure

FTC and Online Advertising Guidance/Compliance (cont.)

- Required disclosures must be **clear and conspicuous**
 - Placement in the ad and its proximity
 - Prominence of the disclosure
 - Whether it is unavoidable
 - Whether other parts of the ad distract attention from the disclosure
 - Whether the disclosure needs to be repeated in different places on a website

FTC and Online Advertising Guidance/Compliance (cont.)

- Required disclosures must be **clear and conspicuous**
 - Whether disclosure audio messages are presented in an adequate volume and cadence
 - Whether visual disclosures appear for a sufficient duration
 - Whether the language of the disclosure is understandable to the intended audience

Hyperlinks

- When using a hyperlink to lead to a disclosure:
 - Make the link obvious
 - Label the hyperlink appropriately to convey the importance, nature and relevance of the information
 - Use hyperlink styles consistently
 - Place the hyperlink as close as possible to the relevant information it qualifies
 - Take consumers directly to the disclosure on the click-through page
 - Assess the effectiveness of the hyperlink by monitoring click-through rates and other information

Clear and Conspicuous

- Advertising must be truthful and not misleading
- Advertisers must have evidence to back up their claims (substantiation)
- Advertisements cannot be unfair

Key Takeaways

- Credit Union policies are a necessity
- Social Media Coordinator designation
- Be transparent
- When in doubt, disclose, disclose, disclose
- Get it in writing
- Fix your mistakes
- Curb your expectations



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