



VENABLE

Mountain Rose Herbs Social Media Influencers

November 14, 2018

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Shahin O. Rothermel

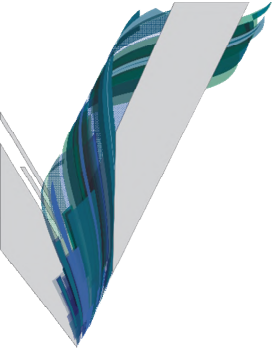
SORothermel@Venable.com

202.344.4550



AGENDA

- Introduction
- Disclosing “Material Connections”
 - When A Disclosure Is Required
 - How to Disclose
- Examples of Influencer Posts
- Making Appropriate, Substantiated Product Claims

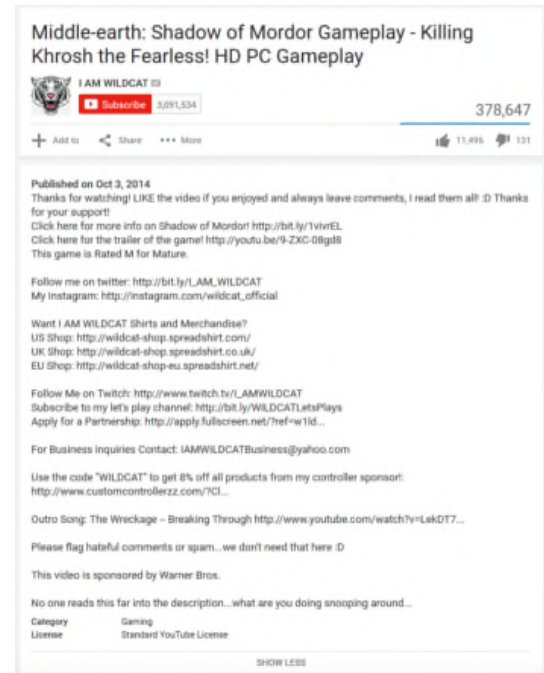


Introduction

Social Influencers and Brand Ambassadors



Victoria Justice
@VictoriaJustice
Enjoying a cup of FitTea on this beautiful Monday!
#FitTea #ad





Social Influencers and Brand Ambassadors: Disclosure of Material Connections

Part IV

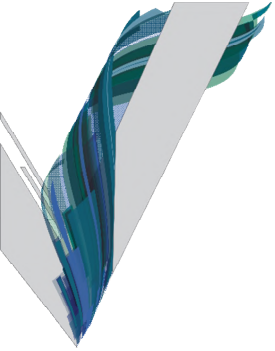
Federal Trade Commission

16 CFR 255

Guides Concerning the Use of
Endorsements and Testimonials in
Advertising Federal Acquisition
Regulation; Final Rule

§255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed.

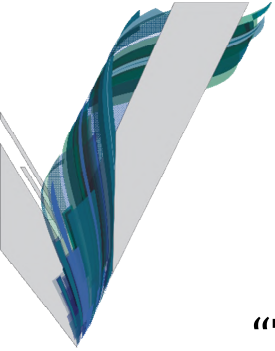


When A Disclosure Is Required



When Do Influencers Need to Disclose?

- Based upon the FTC Endorsement Guidelines, influencers must disclose any “Material Connection”:
 - Payment
 - Free product
 - Sweepstakes entry
 - Other things of value
 - Other business or family relationship to seller
 - Employee relationship
- That would not be expected



Put Another Way...

“The Commission will find an advertisement deceptive if the ad misleads consumers as to its nature or source, including that a party other than the sponsoring advertiser is its source. Misleading representations of this kind are likely to affect consumers’ decisions or conduct regarding the advertised product or the advertisement, including causing consumers to give greater credence to advertising claims or to interact with advertising content with which they otherwise would not have interacted.”

-Enforcement Policy Statement on Deceptively Formatted Advertisements



Best Practices

- If the existence of a financial interest will not be clear to an audience from TV or radio, in print ads, or in non-traditional broadcast advertisements, celebrity paid to endorse a product or service **MUST** disclose his/her interest.

Federal Trade Commission Enforcement Actions



CONTACT | Stay Connected | Privacy Policy | FTC en español

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Search

ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE | I WOULD LIKE TO...

Home » News & Events » Press Releases » FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

Commission aims to improve disclosures in social media endorsements

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FOR RELEASE
April 19, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Online Advertising and Marketing

After reviewing numerous Instagram posts by celebrities, athletes, and other influencers, Federal Trade Commission staff recently sent out more than 90 letters reminding influencers and marketers that influencers should clearly and conspicuously disclose their relationships to brands when promoting or endorsing products through social media.

The letters were informed by petitions filed by Public Citizen and affiliated organizations regarding influencer advertising on Instagram, and Instagram posts reviewed by FTC staff. They mark the first time that FTC staff has reached out directly to educate social media influencers themselves.

The FTC's Endorsement Guides provide that if there is a "material connection" between an endorser and an advertiser – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless it is already clear from the context of the communication. A material connection could be a business or family relationship, monetary payment, or the gift of a free product. Importantly, the Endorsement Guides apply to both marketers and endorsers.

EVENTS CALENDAR

For Consumers
Blog: Is that post #sponsored?

For Businesses
Blog: Influencers, are your #materialconnection #disclosures #clearandconspicuous?
Endorsements
FTC's Endorsement Guides: What People Are Asking

Media Resources
Our Media Resources Library provides one-stop collections of materials on numerous issues in which the FTC has been actively engaged. These cases are

CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers

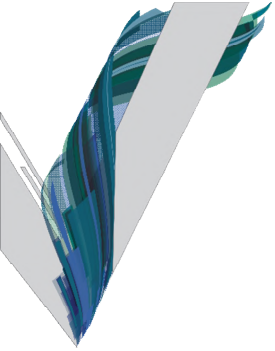
Owners must disclose material connections in future posts; FTC staff also sends 21 warning letters to prominent social media influencers


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FOR RELEASE

September 7, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing



 **TmarTn** 
@TmarTn Follow

Made \$13k in about 5 minutes on CSGO betting. Absolutely insane. Reactions here 😂: youtu.be/_V-dS74WJTw

RETWEETS 109 LIKES 915 

9:56 PM - 6 Mar 2016

↩ 45 ↻ 109 ❤ 915

 **Thomas** 
@ProSyndicate Follow

Bruh.. i've won like \$8,000 worth of CS:GO Skins today on @CSGOLotto I cannot even believe it!

RETWEETS 75 LIKES 972 

4:34 PM - 30 Mar 2016

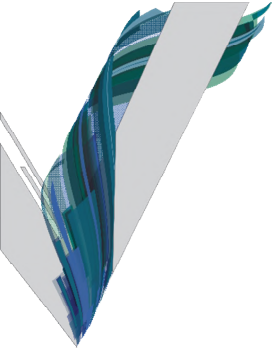
↩ 52 ↻ 75 ❤ 972

CSGOLotto, Inc., Trevor Martin a/k/a TmarTn; and Thomas Cassell, a/k/a Syndicate

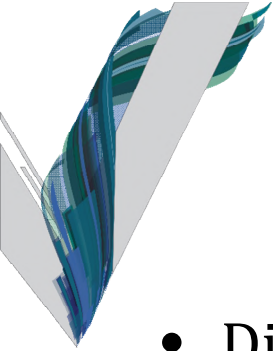


Best Practices

- **Miley Cyrus:** Thanks [@blackjet](#) for the flight to Silicon Valley! [#wecantstop](#)
Paid?
- **Kim Kardashian:** Pregnancy lips.... [@EOS](#) to the rescue! LOL
<http://twitpic.com/ctpyjj> **Paid?**
- **Federal Trade Commission:** “When it’s not obvious it’s an ad, people should disclose that they’re being paid.” The FTC suggests using “#Ad”.



How to Disclose



Best Practices

- Disclosure must be made in the same format (orally, written, etc.) in which the influencer makes the claim.
- Disclosures must be made *every time* an influencer appears in a broadcast or print advertisement for a product.



Best Practices

- Disclosures must be easily understood and can be as simple as:
 - “As a spokesperson for Mountain Rose Herbs...”; “I’ve teamed up with Mountain Rose Herbs ...”
 - “I was paid by Mountain Rose Herbs.”
 - “I received [name of product or other consideration] from Mountain Rose Herbs to talk about....”
 - “[NAME] is a spokesperson for Mountain Rose Herbs.”
 - #ad, #sponsored
 - NOTE: Simply disclosing the endorser’s relationship with the company in an “About” page on the endorser’s website will not be sufficient.



Disclosures Must Be Unavoidable

- Early: Ideally placed at beginning of longer post.
- Grabs attention:
 - Not in middle of or at end of list of # or @ terms.
 - Not “below the fold” or after “read more”
 - Not hidden in a hyperlink
- Where viewers likely to look: if a video then in the video
- Often: Disclosure with any teasers or links or social posts driving viewers to the post. Repeat disclosures for streamed content

What About “Paid Promotion” on YouTube? FTC Lukewarm

Is there a feature that can help me inform viewers about Paid Promotion in my videos? 

Yes. We now offer an additional feature that enables creators to opt-in to a visible disclosure for viewers, which appears as a text overlay for the first few seconds when a viewer watches the video.

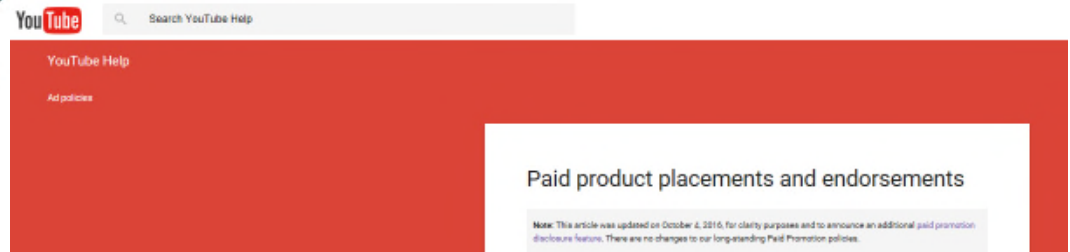
You can choose to add the paid promotion disclosure to any new or existing videos without having to upload a new video. If you add the paid promotion disclosure to an existing video, the video will keep its view count and other video metrics.

Use the paid promotion disclosure feature by following these instructions:

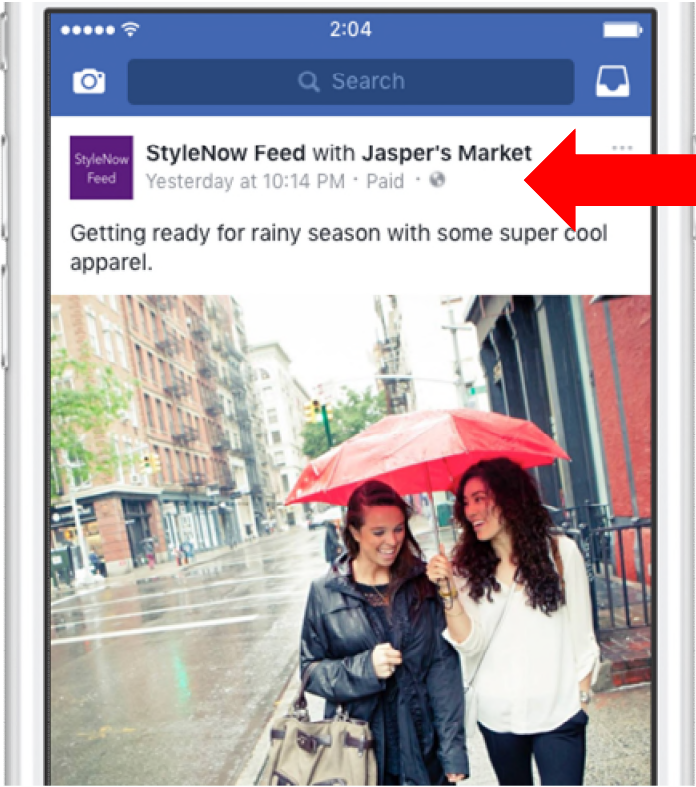
1. For any new or existing video that contains Paid Promotion, [follow the steps above](#) to check the “video contains paid promotion” box.
2. You’ll see a second checkbox that says **Help me inform viewers of paid promotion by adding a disclosure to this video.**
3. Check this box to add a 10-second text disclosure on your video that says “Includes paid promotion.”
4. Viewers will see this when they start watching the video on a computer or the latest version of the YouTube mobile app.

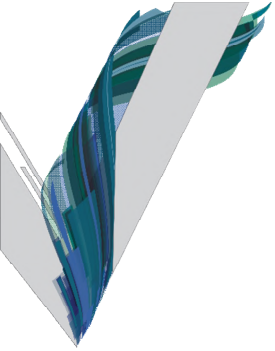


Note: Even if you use the paid promotion disclosure feature, keep in mind that different jurisdictions have various requirements for creators and brands involved in Paid Promotion that may require you to do more, so be sure to check and follow applicable laws.



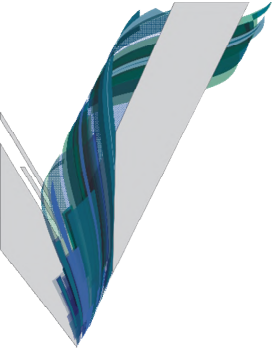
Facebook/Instagram “Paid”





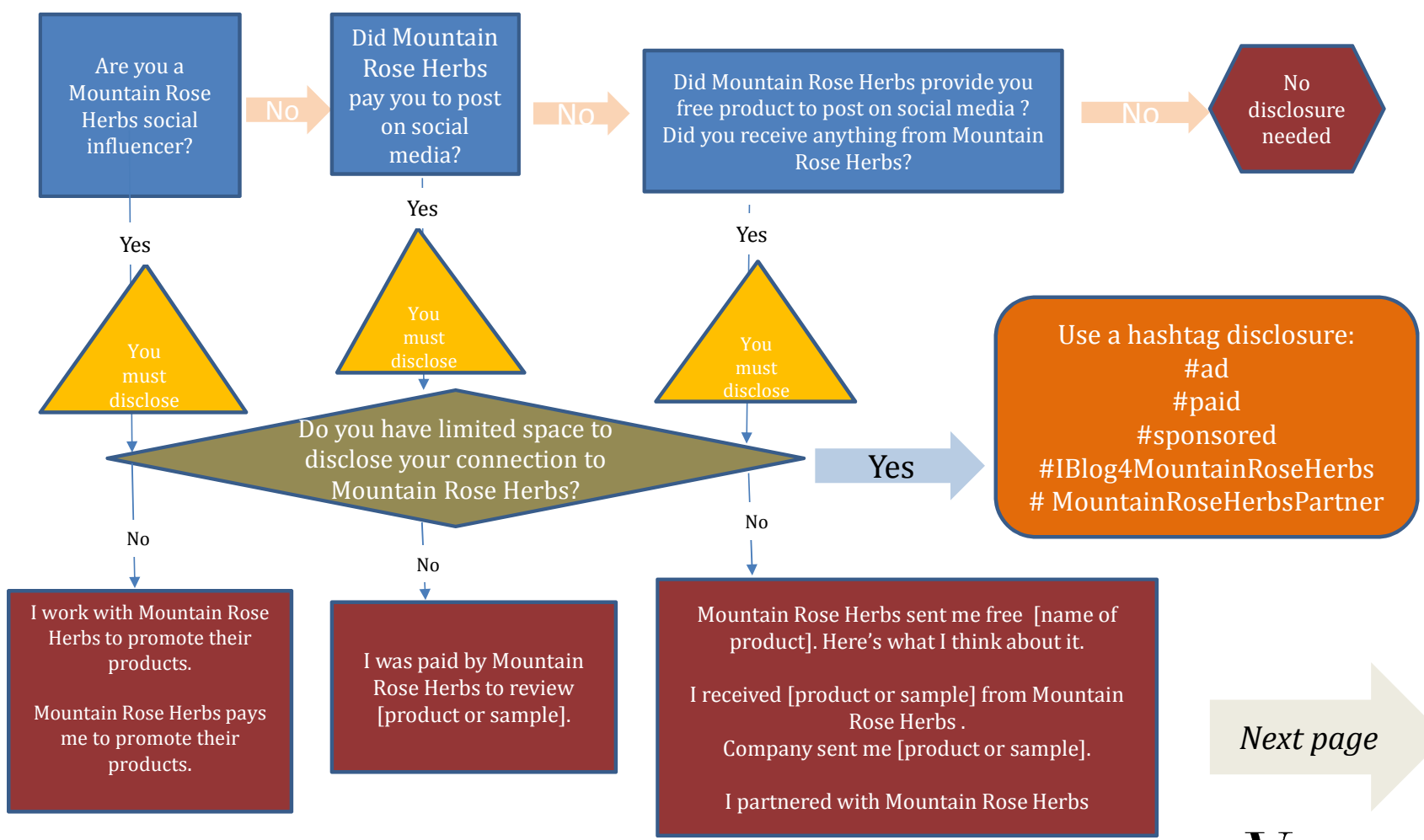
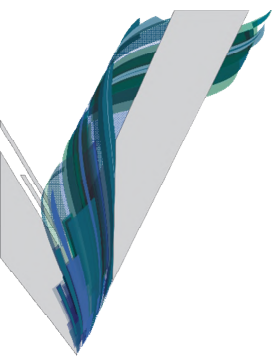
Bottom Line

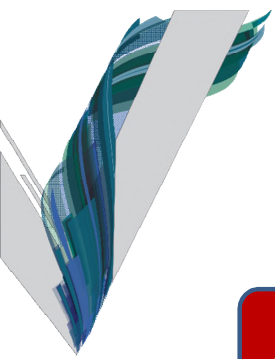
Not Sufficient	Sufficient
Branded	Ad, advertising, paid advertising
Sp, spon	Sponsored
Ambassador	Mountain Rose HerbsAmbassador, Mountain Rose Herbs_Ambassador,
Partner	Mountain Rose Herbs Partner Mountain Rose Herbs_Partner
Thanks, ThankYou, ThanksBrand	Thanks Mountain Rose Herbs for [detail the products given]
Brand	
Platform disclosure alone	



The Do's and Don'ts for Social Media Influencers	
FTC RECOMMENDATIONS	PRACTICES TO AVOID
 <p>Clearly DISCLOSE when you have a financial or family relationship with a brand</p>	 <p>DON'T ASSUME followers know about all your brand relationships</p>
 <p>Ensure your sponsorship disclosure is HARD TO MISS</p>	 <p>Don't assume disclosures BUILT INTO social media platforms are sufficient</p>
 <p>Treat sponsored tags, including tags in pictures, LIKE ANY OTHER endorsement</p>	 <p>Don't use AMBIGUOUS DISCLOSURES like "Thanks," #colleb, #sp, #spon, or #ambassador</p>
 <p>On image-only platforms like Snapchat, SUPERIMPOSE DISCLOSURES over the images</p>	 <p>Don't rely on disclosures that people will see only if they CLICK "MORE"</p>

Source: Federal Trade Commission





What social media site are you using?

Video Website
(example: YouTube)

Disclose in:

- (1) The description of the video *and*
- (2) Spoken out loud during the video *and*
- (3) Written on the bottom of the screen throughout the video

***Platform disclosure mechanism is NOT enough.

Facebook

Disclose:
At the very beginning of/as part of, but not at end of or buried in, the post.
***Platform disclosure mechanism is NOT enough.

Twitter

Personal Blog

Disclose:
At the very beginning of the post

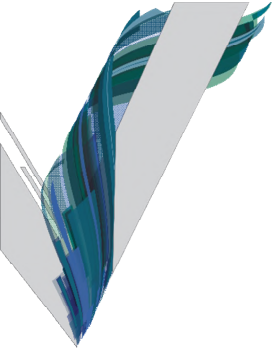
If you would like, you may *also* create a separate page of the website called "Advertising Disclosure"

Photo Sharing Site
(Instagram or Pinterest)

Disclose

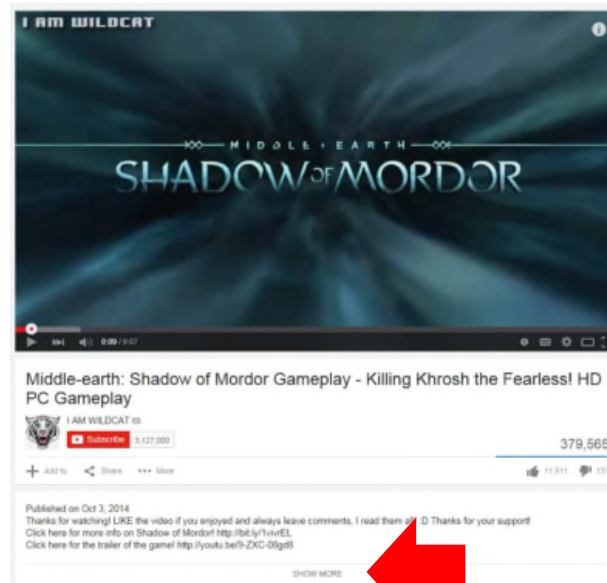
- (1) In the picture itself *and*
- (2) In the description of the picture

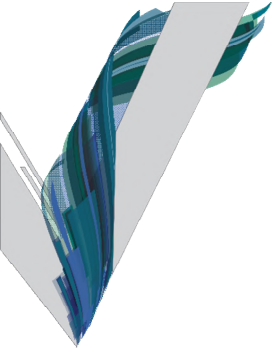
***Platform disclosure mechanism is NOT enough.



How Not to Disclose:

Warner Bros. Home Entertainment, Inc.





How Not to Disclose: *Warner Bros. Home Entertainment, Inc.*

Middle-earth: Shadow of Mordor Gameplay - Killing Khrosh the Fearless! HD PC Gameplay

I AM WILDCAT 378,647

Published on Oct 3, 2014
Thanks for watching! LIKE the video if you enjoyed and always leave comments, I read them all :D Thanks for your support!
Click here for more info on Shadow of Mordor! <http://bit.ly/1vivrEL>
Click here for the trailer of the game! <http://youtu.be/9-ZXC-0Bg8s>
This game is Rated M for Mature.

This video is sponsored by Warner Brothers.

EU Shop: <http://wildcat-shop.eu-spreadshirt.net/>

Follow Me on Twitch: <http://www.twitch.tv/IAMWILDCAT>
Subscribe to my lets play channel: <http://bit.ly/WILDCATletsPlays>
Apply for a Partnership: <http://apply.fullscreen.net/?ref=wts...>

For Business Inquiries Contact: IAMWILDCATbusiness@youtub.com

Use the code "WILDCAT" to get 8% off all products from my controller sponsor:
<http://www.customcontrollerz.com/?CL...>

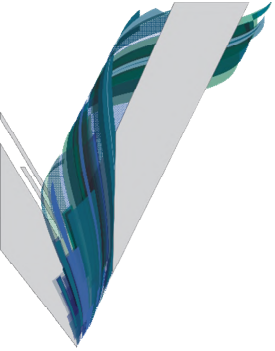
Outro Song: The Wreckage - Breaking Times <http://www.youtube.com/watch?v=LskDT7...>

This video is sponsored by Warner Bros.

No one needs you to see the description... what are you doing snooping around...

Category Gaming
License Standard YouTube License

SHOW LESS



How Not to Disclose: *Warner Bros. Home Entertainment, Inc.*

Middle-earth: Shadow of Mordor Gameplay - Killing Khrosh the Fearless! HD PC Gameplay

I AM WILDCAT 378,647

Published on Oct 3, 2014

Thanks for watching! LIKE the video if you enjoyed and always leave comments, I read them all :D Thanks for your support!

Click here for more info on Shadow of Mordor! <http://bit.ly/1vivrEL>

Click here for the trailer of the game! <http://youtu.be/9-ZXC-0Bgjs>

This game is Rated M for Mature.

Follow me on twitter: <http://bit.ly/144-003DQAT>

Subscribe to my let's play channel: <http://bit.ly/WILDCATletsplay>

Apply for a Partnership: <http://apply.fullscreen.net/?ref=wild...>

For Business Inquiries Contact: IAMWILDCATbusiness@yahoo.com

Use the code "WILDCAT" to get 8% off all products from my control sponsor: <http://www.customcontrollezz.com/7CL...>

Outro Song: The Wreckage - Breaking Through <http://www.youtube.com/watch?v=LskDT7...>

Please flag hateful comments or spam... we don't read that here :D

This video is sponsored by Warner Bros.

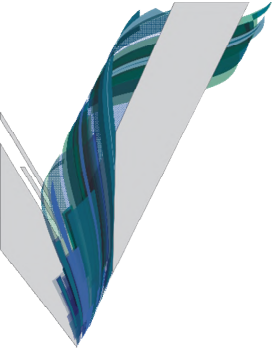
No one reads this far into the description... what are you doing snooping around...

Category: Games

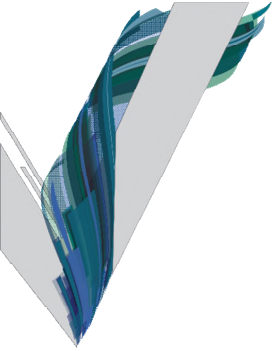
SHOW LESS

Examples: FTC Educational Letters to Influencers





vanessahudgens 6 bottles of whispering
angel in ...



 rachparcell [Follow](#)

rachparcell Happiest birthday to my sweet Isla Rose. I will never be able to put into words how much I love this little girl. She had my whole heart from the moment I laid eyes on her. I'm so blessed and honored to be her mama. I'm sharing a bunch of photos (some never before seen) of Isla Rose over the last two years on my blog today!! (link in profile). 🌸🌸#happybirthday #secondbirthday

load more comments

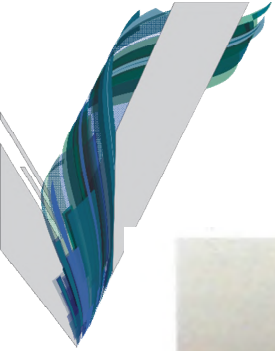
- gladysvitaliano She is beautiful god bless her .she is a little angel 🍀
- lc_steele Sweet Isla 🌸🌸
- maryamsd She's such a beauty 🍀 God bless her
- olivelanedesign Happy Birthday Isla!🌸🌸🌸
- rclayton She could not be more precious.



17,822 likes

see 3

Log in to like or comment.



 **lisarina** [Follow](#)

lisarina It's been over a year and I'm still going strong with my @teamiblends detox tea! I'm always headed out somewhere and their tumbler is so convenient to just grab and go. Just in time for Mother's Day or your next vacation, you can use code RINNA for 15% off yours. #thankyouteam! #teamipartner

load more comments

rob_artist Nice Shades! 🍷👏

hannahble Literally can you adopt me, we can drink xanax smoothies, while doing updates on your lawn 🍷

davgscoop Classy ❤️❤️❤️

brendabrady Ya skinny thing! 🍷

glamtoyourglow You look so pretty... as usual!! Goals!! 🍷🍷🍷🍷🍷

susan.smith166 @lisarina looking good.

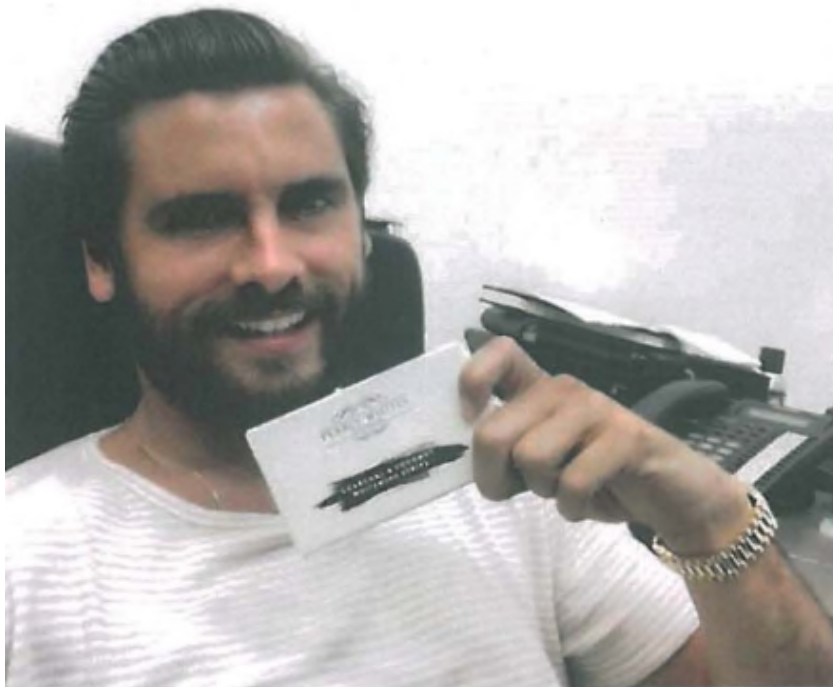
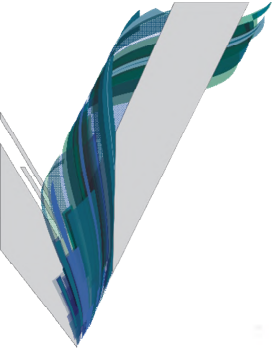
❤️ 💬

5,541 likes

May 4

Log in to like or comment.

Just in time for Mother's Day or your next vacation, you can use code RINNA for 15% off yours. #thankyouteam! #teamipartner



118k likes

7w

letthelordbewithyou Getting my teeth 4th of July ready! @pearlywhitesaustralia introduced me to coconut & charcoal infused whitening strips! Check out pearlywhitesaustralia.com #nosensitivity #ad @pearlywhitesaustralia

view all 679 comments

zsosfizenyeri @xjoyyx of niet, laat maar

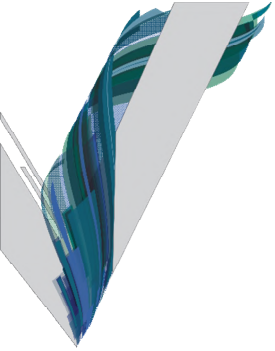


letthelordbewithyou Getting my teeth 4th of July ready! @pearlywhitesaustralia introduced me to coconut & charcoal Infused whitening strips! Check out Pearlywhitesaustralia.com #nosensitivity #ad @pearlywhitesaustralia

When Are Material Connections “Expected”?



meal prep. Give it a try with my code
“FreshCaroline” for \$35 off your first
healthy week at hellofresh.com #fallmeals
#healthy #hellofreshpics #sp



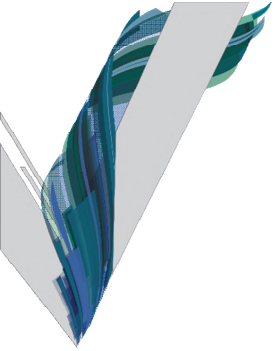
kourtneykardash
@kourtneykardash

Back to my morning routine. I'm starting the day with my @fittea. Tea time!



khloekardashian
@khloekardashian

Love starting my day like this! Pre gym, post gym, afternoon pick me up... @fittea always does the trick!!!



kimkardashian [Follow](#)

kimkardashian Finally found @fittea shakes for protein, fiber, and probiotics. Perfect after my workouts 🍷 Fit Shakes tastes amazing #ad

Load more comments

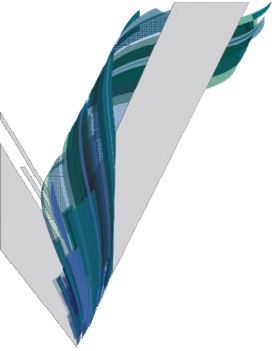
stephaniapazos @sophia_pazos
mnogochastya aocceu
gmspdr @sabelam80
jasa_pembuatan_patung_iki lhooo @dhita_o
crowntheyounglady So this is two bundles @babs_beauty
pamelajeandistefano @jgimmell this cut and length 🍷🍷🍷🍷🍷
toshiro5060 Just saw this on your latest episode of kuwtk
chucklechucklevision Lol this ad is so fake


🍷 🗨️

1,611,061 likes

MAY 22

Add a comment...

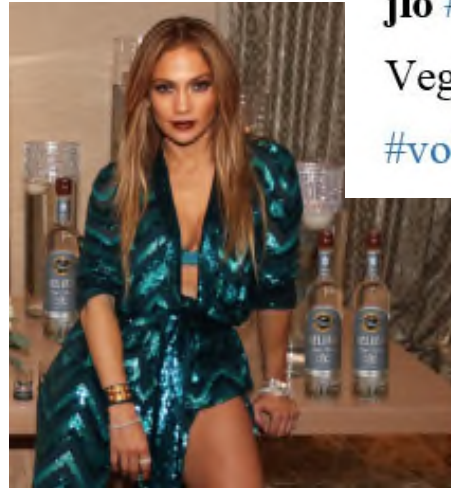
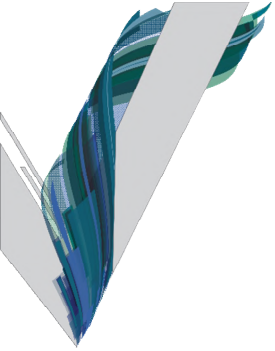


 diddy [Follow](#)

diddy Let's GO!!! @aquahydrate #balance
#hydrate #tryIT

- liebpance @konan_b_pacome
- falboybeatz #drinkingsofnewyork
- elishazuniga72 Cheers @iamdiddy I'm drinking the same thing right now as I'm sweating it out in the sauna. #72staypositive
- finedicipline We going meeeen
- burak_derulo_0 Pastor Diddy 🙏👉
- sephora9124 I will need this after you make me squirt
- knolig_works Nice shot
- mastew25 This water is so good. I hope to buy a case this weekend. Delicious

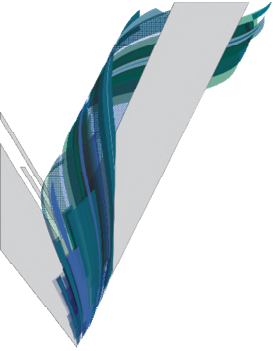
Log in to like or comment. ...

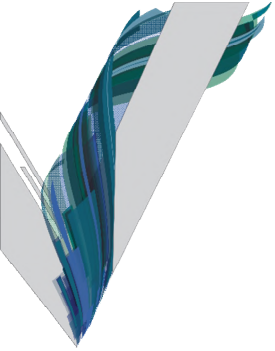


jlo #TBT to my Birthday weekend in Vegas!! Thanks again @vodkabeluga #vodkabeluga

kimberlykates.13 BEAUTIFUL
2016@irezatehran Hi
lorenasantilagomusic 🍷🍷🍷
jswing416 Missed your Birthday!
Happy Birthday
passionatelove7771 Wow looking steamy
hot Mami
passionatelove7771 Also late happy birthday
passionatelove7771 When is your birthday anyway?
yeter_g213 Drink with your friend and have fun I'll come get u at they end...

Log in to like or comment.





emrata

Follow

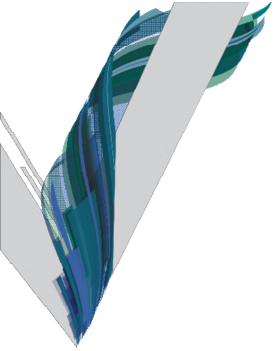
emrata Thanks @nipandfab for these pads. #ad @cvspharmacy @mrsrodial #nipandfab

william_naim @emrata Hey How are u ?? I follow you for a long time, I want to congratulate you for what you do and the image that you arrive to give people through the social networks. You inspire me very much, I am jewelry designer my brand is @myjewelerisw and I would love to be able to get in touch with you to send you jewels from my collection. I guess you have to be much asked .. but I try my luck .. thank you so much continues like that .. 🙏🥰

d.i.a.m.o.n.d.96 Very beautiful 💜💜💜

Log in to like or comment.





jwoww

Follow

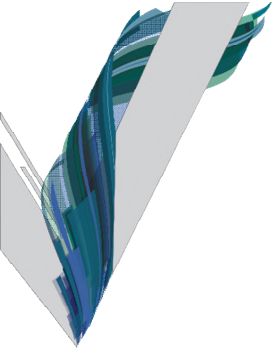
20.5k likes

10w

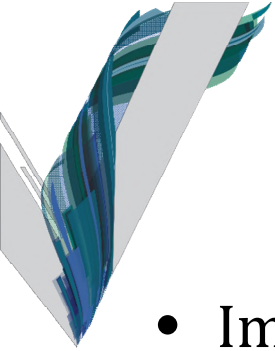
jwoww This is some serious #boxgoals right here. So in love with my fall box from @fabfitfun. The ModCloth scarf is so cute and cozy and there are so many new beauty products that I can't wait to try (like

www.fabfitfun.com for \$10 off if you don't already get their boxes. You will not be disappointed! #fabfitfun #fffpartner

beautiful ! ❤️



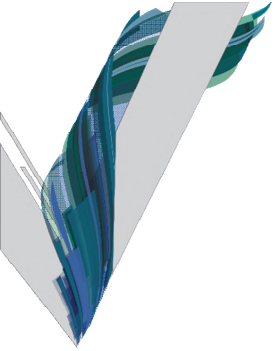
Making Appropriate, Substantiated Product Claims



Advertising Claims

- Important for influencers to make appropriate and substantiated claims because Mountain Rose Herbs may be responsible for claims that are made by its influencers

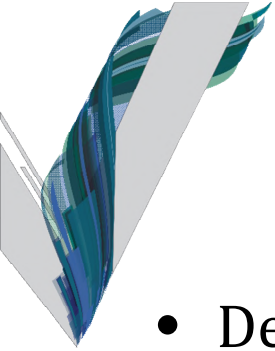




Example

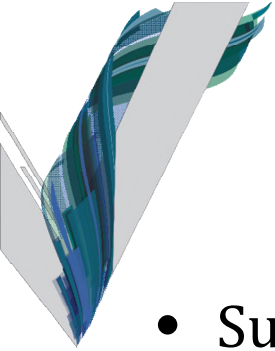


I'm partnering with Duchesnay USA to
Raise awareness about treating morning
sickness. If you have morning sickness,
Be safe and sure to ask your doctor



Types of Claims

- Determination of what claims are being made is critical first step in analyzing a review.
- Types of claims may include:
 - Express claims: a claim that is literally made in the ad. Examples:
 - “Our mouthwash prevents colds”
 - Implied claims: a claim that is made indirectly or by inference. Examples:
 - Our mouthwash kills the germs that cause colds”
 - The implication: that the mouthwash will prevent colds




Advertising Claims and Substantiation

- Substantiation is required for any objective, provable claims (express or implied) made about a product or service in ads.
 - Examples: efficacy, quality, comparative claims.
- Must have a reasonable basis for the claim **before** publishing the claim.
- The substantiation should be kept on file.



What is Proper Substantiation?

- 
- Level of support required will depend on claim, based on factors such as:
 - Type of product/service: if related to health or safety, higher level will be required (e.g. competent and reliable scientific evidence).
 - Type of claim: higher standard if difficult for consumers to evaluate the claim on their own.
 - Consequences of a false claim: potential harm to consumers who rely on the claim.
 - Industry standard: amount of support considered reasonable in the industry.

