

PR NEWS' THE BIG 3 CONFERENCE:  
TWITTER/PINTEREST/FACEBOOK

# HOW TO AVOID THE LEGAL LAND MINES OF THE BIG 3

August 9, 2012

**Allison Fitzpatrick**

Partner  
Advertising, Marketing & Promotions  
212.468.4866  
afitzpatrick@dglaw.com

# PRESENTATION OVERVIEW

- » Social Networking and Social Media Platforms
- » Pinterest and DMCA Hot Issues
- » Other Sources of Social Media Liability
- » Running Promotions on Facebook and Twitter

# SOCIAL NETWORKING/SOCIAL PLATFORMS: TWITTER - TERMS



## » Broad License on Twitter

- “You retain your rights to any content you submit, post or display on or through the services. By submitting, posting or displaying content on or through the services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such content in any and all media or distribution methods (now known or later developed).”

# SOCIAL NETWORKING/SOCIAL PLATFORMS: TWITTER - TERMS



- » “You agree that **this license includes the right for Twitter to make such content available to other companies**, organizations or individuals who partner with Twitter for the syndication, broadcast, distribution or publication of such content on other media and services, subject to our terms and conditions for such content use. Such additional uses by Twitter, or other companies, organizations or individuals who partner with Twitter, may be made with no compensation paid to you with respect to the content that you submit, post, transmit or otherwise make available through the services.”

# FACEBOOK AND PINTEREST TERMS

- » Facebook and Pinterest provide that by placing content on these sites, you are granting them a license to use that content, and to the extent it has been shared with others, that use is perpetual
- » Ownership: You do not lose ownership rights in your content. However, you do lose control over how it is used by Facebook and Pinterest

# SOCIAL MEDIA PRACTICES

- » Monitor what content is placed on social media to make sure that what is placed on the sites is content that you are ok with losing some control over
- » Carefully manage accounts (e.g., keep business and personal accounts separate)
- » Implement and ensure adherence to social media policy

# SOCIAL MEDIA POLICY

- » Only “authorized” representatives post on behalf of company
- » Training
- » Fully disclose affiliation with company
- » Be respectful and no inappropriate content
- » Respect third party rights
- » No competitive, confidential or financial information
- » Internet is a permanent record

# SOCIAL MEDIA PRACTICES

- » Avoid the “Tweet Heard Around the World” (New Media Strategies/Chrysler)





# PINTEREST AND DMCA HOT ISSUES


← → ↻ 🔍 http://pinterest.com/search/?q=new+york+mets Search results for ne... ×

new york mets 🔍 **Pinterest** About ▾

**Pinterest is an online pinboard.**  
Organize and share things you love.


[Request an Invite »](#) [Login](#)

[Pins](#) · [Boards](#) · [People](#) — search results for **new york mets** [Like](#)




New York Mets!  
1 like 11 repins

[Karree Boyle](#) onto **Sports Teams**




New York Mets  
1 comment 4 repins

[Dayenne Kruize](#) onto **I Heart Cakes**




New York Mets  
9 likes 99 repins

[Roger Uwai](#) onto **Cool Logos Around The World**




New York Mets  
3 likes 6 repins

[Go Dutchbaby](#) onto **Vintage Baseball Bar Mitzvah**




New York Mets  
3 likes 28 repins

[Dayenne Kruize](#) onto **I Heart Cakes**




1986 New York Mets  
12 likes 3 comments 66 repins


[Gloria Kinney](#) onto **Baseball**



MLB Redesign Project: New York Mets  
1 like 5 repins



[Melissa Hardy](#) that's actually the Yankees logo...



New York Mets Logo (1962 - 1998)  
2 likes 16 repins

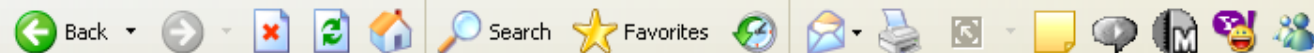
[Lisa Calabrese](#) Love

[Gretchen Ehle](#) RIP Carter.

[Judith Miele](#) I was game 7! Lets Go Mets

# DIGITAL MILLENNIUM COPYRIGHT ACT

- » Provides safe harbor from claims of copyright infringement for third party content
  - Must lack actual knowledge or awareness of infringement
  - Procedures
    - Takedown policy
    - Designate registered agent
    - Must take down infringing content



Broadcast Yourself™

Hello, [libekg](#)  (0) | [My Account](#) | [History](#)  | [Help](#) | [Log Out](#) | [Country:](#) [Videos](#)[Categories](#)[Channels](#)[Community](#) [Upload](#) powered by 

## Copyright Infringement Notification

To file a copyright infringement notification with us, you will need to send a written communication that includes substantially the following (please consult your legal counsel or see Section 512(c)(3) of the Copyright Act to confirm these requirements):

- i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material. **Providing URLs in the body of an email is the best way to help us locate content quickly.**
- iv. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- v. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Such written notice should be sent to our designated agent as follows:

DMCA Complaints  
YouTube, Inc.  
1000 Cherry Ave.  
Second Floor  
San Bruno, CA 94066  
Fax: 650.872.8513

[About YouTube](#)[Press Room](#)[Advertising](#)[Contact Us](#)[Jobs at YouTube](#)[Help Center](#)

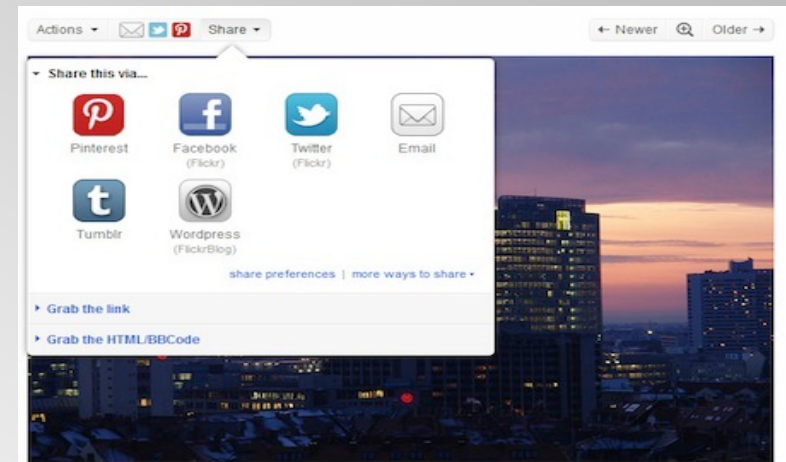
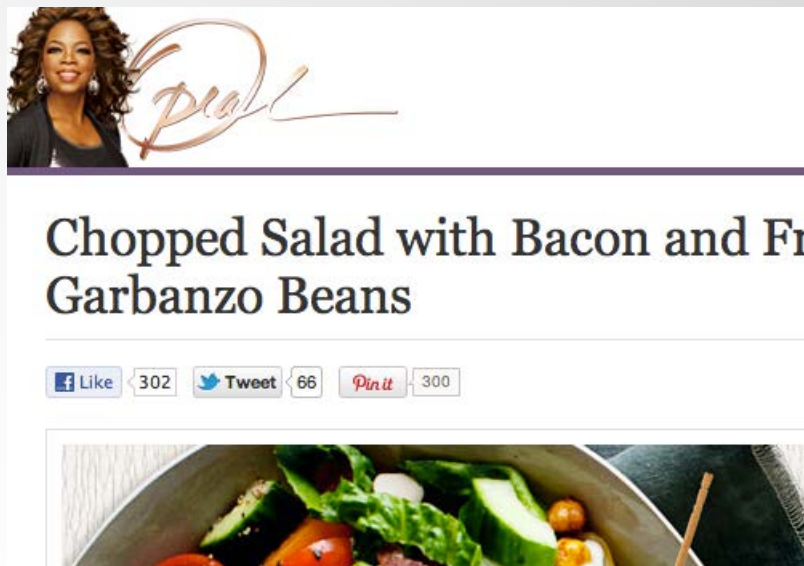
# PINTEREST RISKS

» On March 14, 2012, *Wall Street Journal* asked “*Is Pinterest the next Napster?*”



# MITIGATING PINTEREST RISKS

- » Do Not Pin Code
- » Photographer attribution easier
- » Pin It Buttons



[What is Pinterest?](#)[Pin Etiquette](#)[Getting Started](#)[Support](#)[Goodies](#)[Careers](#)[Press](#)[Team](#)[Terms & Privacy](#)[Copyright & Trademark](#)

## Copyright Infringement Notification

Identify your work on  
your own website

Provide URLs to where your  
work appears on **your own  
website**. e.g.  
<http://mysite.com/products/1>

[+ Identify Another](#)

Identify the infringed  
work on Pinterest

Provide the full URL to **each  
individual pin**. e.g.  
<http://pinterest.com/pin/12345>

[+ Identify Another](#)

Your Full Name

Street Address

City

# PINTEREST TERMS OF USE

- » You agree that any User Content that you post to the Service does not and will not violate any law or infringe the rights of any third party, including without limitation any patent, copyright, trademark, publicity rights or rights of privacy
- » You agree to *indemnify and hold harmless* Pinterest from all claims arising out of or in any way related to (i) your access to or use of the Services or Pinterest Content, (ii) your User Content, or (iii) your breach of any of these Terms

# TREAT PINTEREST BOARD LIKE COMPANY WEBSITE

- » Only pin or repin images that your brand owns or has appropriately licensed for this use
- » Just because a site includes a “Pin it” button does not mean the site has the proper authority to grant you the rights
- » Do not pin images of celebrities or third parties without permission
- » Do not pin third party trademarks without permission



# TREAT PINTEREST BOARD LIKE COMPANY WEBSITE

- » Check the site to which the image links to make sure appropriate content
- » Do not allow users to pin to your brand's board
- » For promotions:
  - Consider providing the images that consumers pin to enter the promotion
  - Register links off Pinterest

# OTHER SOURCES OF SOCIAL MEDIA LIABILITY

## » NAD Action Against Nutrisystem's Pinterest Board

- Nutrisystem's Pinterest Board included consumer testimonials with atypical results
- Under FTC Endorsement Guides required to disclose generally expected results
- Disclaimer: "Results not typical...you can expect to lose 1-2 lbs per week. Individuals are renumerated. Weight loss on prior Nutrisystem program."
- Pinterest is advertising!

Pinterest is an online pinboard.  
Organize and share things you love.

Request an Invite »

Login

## Real Customers. Real Success.



Nutrisystem, Inc.

162 followers, 19 pins

Repin

Like

Comment



Robin K. lost 96 lbs. on **#Nutrisystem** [Results not typical. On Nutrisystem®, you can expect to lose at least 1-2 lbs per week. Individuals are remunerated.



Lisa H. lost 73 lbs. on **#Nutrisystem** [Results not typical. On Nutrisystem®, you can expect to lose at least 1-2 lbs per week. Individuals are remunerated. Weight lost on prior Nutrisystem® program.]



Cora M. lost 42 lbs. on **#Nutrisystem** [Results not typical. On Nutrisystem®, you can expect to lose at least 1-2 lbs per week. Individuals are remunerated. Weight lost on prior Nutrisystem® program.]



Christina B. lost 46 lbs. on **#Nutrisystem** [Results not typical. On Nutrisystem®, you can expect to lose at least 1-2 lbs per week. Individuals are remunerated. Weight lost on prior Nutrisystem® program.]

# NAD ACTION AGAINST COASTAL CONTACTS

» *Like this Page! So you too can get your free pair of glasses!*

- Material terms (e.g., shipping/handling fees, limit on total number of free glasses) not disclosed until after “liking” the page
- Disclosures should appear in or right below claim
- Not required to remove “likes” because consumers received the benefit of the offer and the number of “likes” not inflated

# SAMSUNG OLYMPIC GENOME PROJECT

- » In April, 18 Olympic athletes, including Amanda Beard, Dara Torres and Mark Spitz, sued Samsung claiming its app violated their right of publicity by using their name and image for commercial purposes
- » Olympians seek profits derived from the Facebook app



# *BOGART v. BURBERRY*

- » Humphrey Bogart's estate filed a lawsuit against Burberry for use of Bogart's name and likeness on Facebook and Twitter without permission
- » Burberry advertised globally that Bogart wore the trench coat in the final scene of Casablanca





## TWITTER SQUATTING

- » In 2009, Cardinals manager Tony La Russa sued Twitter after discovered that someone set up a Twitter account bearing his name
- » According to the complaint, one tweet of the now-deleted account read: “Lost 2 out of 3, but we made it out of Chicago without one drunk driving incident or dead pitcher”
- » For those who don't follow baseball, Cardinals pitcher Darryl Kile died in his hotel room in 2002 of a heart attack and relief pitcher Josh Hancock was killed in a car accident while driving under the influence

# RUNNING PROMOTIONS ON FACEBOOK AND TWITTER: CHECK SOCIAL MEDIA PLATFORM'S TERMS AND CONDITIONS

## » Check all applicable terms

- Facebook: Statement of Rights and Responsibilities, Advertising Guidelines, Promotions Guidelines, Platform Policies
- Twitter: Terms of Service, API Terms of Service, Twitter Trademarks, Guidelines for Contests on Twitter



# FACEBOOK PROMOTION GUIDELINES

## » Facebook Promotion Guidelines

- Must be administered within Apps on Facebook.com, either on a Canvas Page or an App on a Page Tab
- Must not use Facebook features or functionality as a promotion's registration or entry mechanism
  - Act of liking a Page/checking in to a Place cannot automatically register or enter into promotion

# FACEBOOK PROMOTION GUIDELINES

- Must not condition registration or entry upon the user taking any action using any Facebook features or functionality other than liking a Page, checking into a Place, or connecting to your app
- Must not condition registration or entry upon the user liking a Wall post, or commenting or uploading a photo on a Wall
- Must not use Facebook features or functionality, such as the Like button, as a voting mechanism for a promotion

# FACEBOOK PROMOTION GUIDELINES

- Must not notify winners through Facebook, such as through Facebook messages, chat, or posts on profiles or Pages
- Promotions on Facebook must include the following:
  - A complete release of Facebook by each entrant
  - Acknowledgment that the promotion is in no way sponsored, endorsed or administered by, or associated with Facebook
  - Disclosure that the participant is providing information to Sponsor and not to Facebook



Your LOCAL Idaho experts!  
1-800-84-IDAHO

ski & stay \$139pp

1-800-84-IDAHO  
1-800-844-3246  
[Email us](#)

Sun Valley & McCall

- Home
- IDAHO DEALS**
- Lodging InIdaho
- Idaho Destinations
- Activities InIdaho
- Groups InIdaho
- Contact Us

## Facebook Friends Promotion



[home](#) ▶ Facebook Fans

### Chance to win a \$40 travel credit with InIdaho just for choosing to "like" us on Facebook!

We love our Facebook fans! Facebook is a great way for us to keep in touch with our friends. To celebrate our friendship, InIdaho.com will pick one of our fans each month to win a \$40 travel certificate through InIdaho.com.

["Like" us on Facebook now!](#)



Chance to win every month!

For local advice and reservations call our free service at **1-800-844-3246**

435

#### » Promotion Details

- Each month, InIdaho.com will randomly choose 1 of our Facebook fans to win a \$40 travel credit which can be used towards most reservations made through InIdaho.com.
- Each person can win multiple times, but only up to \$240 in travel credit per year.
- Program may be changed or cancelled at any time.
- You must "like" us on Facebook at time of drawing which will be held around the 1st of each month. Winners will be notified via Facebook.

#### » How and When to use your prize

#### » Fine Print

Save 20% on lift tickets at most Idaho resorts!  
[+ learn more](#)

**To enter our monthly Facebook Fans promotion:**  
Each month we'll choose 1 lucky winner from our fans. To enter your name, just "[like](#)" us on Facebook

[To enter, visit and "Like" at www.facebook.com/InIdaho here](http://www.facebook.com/InIdaho)

1-800-844-3246

Share, save or bookmark this page via mobile code  
[» learn about](#)



**Kim Kardashian**

Like

Wall

Info

Blog

Events

Photos

Links

**My Blog**

## Win a Trip to the AMAs with ShoeDazzle!

Posted 11/05/2010 07:15 AM

Hi dolls! ShoeDazzle just launched a fun Halloween costume contest and you can win a trip to the American Music Awards! To enter the 'AMAZE Us! Halloween Contest' all you have to do is submit a photo of yourself dressed up as your favorite music star! The Grand Prize winner gets a trip for two to the 2010 American Music Awards in LA on Sunday, November 21. The winner gets to attend the AMA pre-party on November 20, party on the red carpet alongside the nominees and attendees at L.A. LIVE, enjoy prime orchestra seats at the AMAs, and even go to the official AMA after party at the Conga Room. Plus you'll be staying at the JW Marriot Hotel at L.A. LIVE. There will also be a first runner-up, who will receive a special ShoeDazzle gift package, and eight Honorable Mentions, who'll get a free ShoeDazzle credit to purchase a fab product from the ShoeDazzle website! You can enter online now on ShoeDazzle's Facebook page. Just "like" ShoeDazzle's page and then upload your photos! Make sure you tell all your friends so they can all enter too! You have until November 2! Good luck, dolls!!!

# TWITTER PROMOTIONS

- » In the past, a number of Twitter promotions ran without Official Rules
- » Rules are still required despite 140 character limitation

# OFFICIAL RULES

- » Sponsors can accomplish the rules requirement in a couple of ways:
  - Post abbreviated rules in successive tweets
  - CMP.LY for Rules
  - Include a link to Official Rules or abbreviated rules in tweet
    - Consider tiny urls (e.g., bitly.com) to save space



# Wendy's

@Wendys There's more than 6,500 of us.  
You know when it's real.  
<http://www.wendys.com>

+ Follow

Text follow Wendys to 40404 in the United States

Tweets Favorites Following Followers Lists



**Wendys** Wendy's  
@germany28364 Facebook apps don't work on phones but do give it a try on the desktop!  
23 Oct



**Wendys** Wendy's  
@cylithria Happy to hear we have a surprise element to us. Glad you're a fan!  
23 Oct



**Wendys** Wendy's  
Visit our Here's the Beef Facebook page for your chance to win one of 3,000 vintage Wendy's T-shirts! [bit.ly/ncMfgW](http://bit.ly/ncMfgW).  
23 Oct



**Wendys** Wendy's  
@davidfinizio You are welcome! Have a good rest of the weekend!  
22 Oct



**Wendys** Wendy's  
@sXeMonster31 Niiiiice!  
22 Oct



**Wendys** Wendy's  
@ninamariee13 Thanks! :)  
22 Oct



**Wendys** Wendy's  
@no1here Glad you like 'em!  
22 Oct



**jasonkindrix** Mr.Cheeseburger\_2\_U! by Wendys  
@Wendys all this Saturday college football makes me want a hot and juicy #Wendy's cheese burger!  
22 Oct



**Wendys** Wendy's

## Stay in touch with Wendy's

Join Twitter right now:

Full name

Email

Password

Sign up

### Curious how Wendy's uses Twitter?

Discover who @Wendys follows



### About @Wendys

<b>4,389</b>	<b>2,520</b>	<b>41,359</b>	<b>1,130</b>
Tweets	Following	Followers	Listed

### Recent Images [view all](#)



About Help Blog Status Jobs Terms Privacy Advertisers  
Businesses Media Developers Resources © 2011 Twitter



You know when it's real  
©2011 Oldemark LLC



# CMP.LY FOR PROMOTIONS: RULES INCLUSION



@InfinitiGlobal

Infiniti Global

Enter to win tix to the Taste of LA – tweet  
“The #Infiniti Lounge is the place 2 be  
@TheTasteLA!” Rules: [cmp.ly/R/u8plKX](http://cmp.ly/R/u8plKX)

30 Aug via web ☆ Favorite ↻ Retweet ↩ Reply



## THE TASTE LA TICKET PROMOTION OFFICIAL RULES: OFFICIAL RULES

You have been directed to this page to be informed of contest or sweepstakes rules.  
The full rules are listed below.

SOCIAL  
DISCLOSURE  
POWERED BY **CMP.LY**

### CMP.LY/R DISCLOSURE

THE TASTE LA TICKET  
PROMOTION OFFICIAL  
RULES



INFINITI.

INFINITI  
FOLLOW US ON

### HOW TO ENTER

During the Promotion Period, visit [@infinitiglobal](https://twitter.com/infinitiglobal) on Twitter.com (<http://twitter.com/infinitiglobal>) (Sponsor's Twitter Account") and retweet "The #Infiniti Lounge is the place 2 be @TheTasteLA!" (each, an "Entry"). If you are not already a follower of Sponsor's Twitter Account, you must become a follower of Sponsor's Twitter Account in order to enter. You can "unfollow" Sponsor's Twitter Account at any time after the Promotion. Limit one (1) Entry per person/Twitter account during the Promotion Period.

### OFFICIAL RULES

THE TASTE LA Ticket Promotion Official Rules  
**NO PURCHASE NECESSARY TO ENTER OR WIN. A PURCHASE DOES NOT IMPROVE YOUR CHANCES OF WINNING.**

1. Eligibility. Participation in the Taste LA Ticket Promotion ("Promotion") is open only to legal residents of the fifty (50) United States and the District of Columbia who are at

# TWITTER CONTEST GUIDELINES

- » Discourage the creation of multiple accounts
- » Discourage posting the same Tweet repeatedly (e.g., multiple entries in same day will be disqualified)
- » Comply with all laws and consult with your attorney

## KEY TAKEAWAYS

- » Monitor what content is placed on social media and ensure you are comfortable with losing some control over it
- » Implement and ensure compliance with a social media policy
- » General Advertising, Intellectual Property and Promotions laws apply to social media
- » Check Facebook and Twitter terms and conditions before running a promotion
- » When in doubt, consult with legal counsel

# QUESTIONS?

**Allison Fitzpatrick**

Partner  
Advertising, Marketing & Promotions  
212.468.4866  
[afitzpatrick@dglaw.com](mailto:afitzpatrick@dglaw.com)