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For Specific Results Ad Claims

Announcement

- * For informational purposes only
- * Not legal advice
- * Not affiliated with FTC
- * Not covering all requirements

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Download 2 Free AI Legal Tools

ecommerceattorney.io/ftc-ai-tools

- * Widget-Research AI Cases
- * Framework-Disclosures

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What Are You Selling?

- * Specific Results Examples

- **Make Money: Results = \$**
- **Weight Loss: Results = Lbs.**

- * AI-Enhanced Results

- **"AI Powered"**
- **"AI-Driven"**
- **"Proven Artificial Intelligence"**

Marketing Challenge

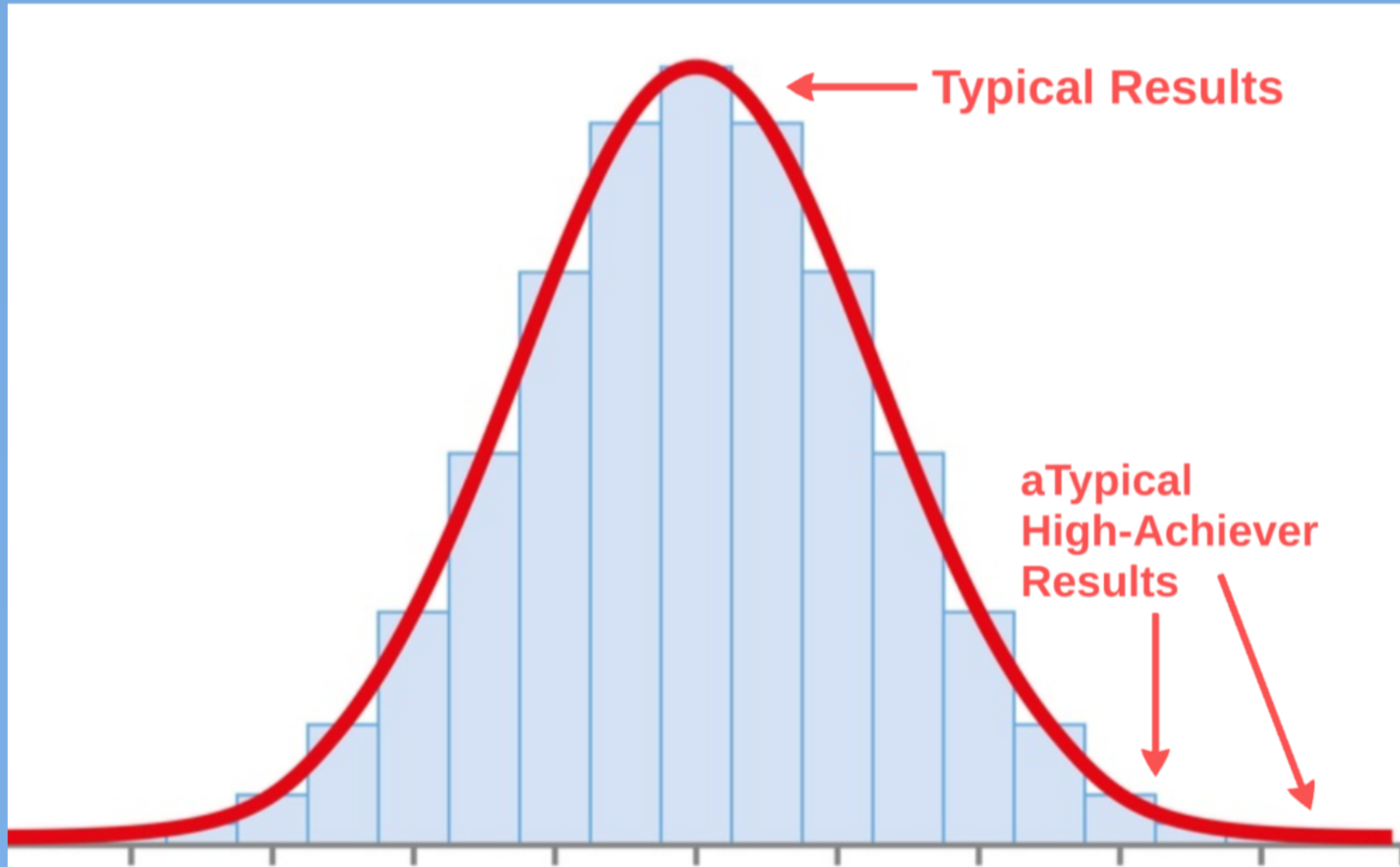
=> Disclose: High-Achiever Results

- * Making money: specific claim (in \$)**
- * Weight loss: specific claim (in lbs.)**
- * Non-specific AI-enhanced result**
- * Any specific result in numbers**

-OR-

You Won't Sell Anything!!

What are High-Achiever Results?



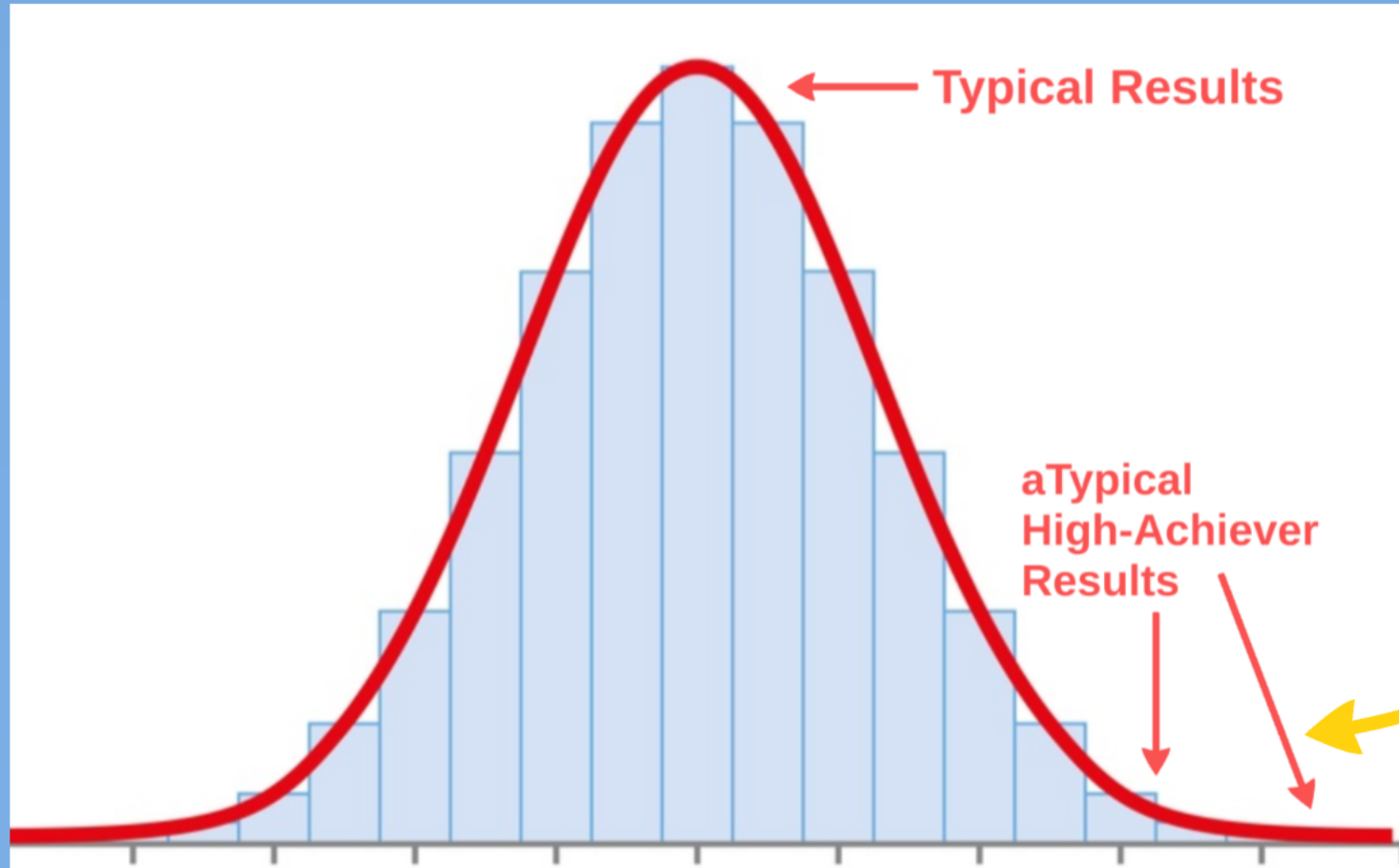
1980 FTC Endorsement Guides

- * "Safe Harbor" Provision: atypical Testimonials
- * Testimonials with atypical results are legal, provided they are accompanied by a clear disclaimer, such as "results not typical".

2009 "Results Not Typical" Disclaimer Failed to Communicate Intended Message

- * Consumers didn't understand or believe the "results not typical" disclaimers
- * Instead, consumers still believed atypical results were typically achievable

What Actually Happened



Viewed as
Typical despite
the disclaimer:
(disclaimer was
deceptive)

2009: Endorsement Guides

Results Not Typical Disclaimer Eliminated

Substantiate
Specific Result
is Typical Or
Disclose GER



** FTC: "If the advertiser does not have **substantiation** that the endorser's experience is representative of what consumers will **generally achieve**, the advertisement should clearly and conspicuously **disclose the generally expected performance in the depicted circumstances**, and the advertiser must possess and rely on adequate **substantiation** for that representation."*

"Results Not
Typical" Safe
Harbor is
Eliminated



** FTC: "...the revised Guides **eliminate** what sometimes previously has been referred to as the **"Results Not Typical" safe harbor for consumer testimonials.**"*

2009: Are Disclaimers **Totally Eliminated**?

** FTC: "... cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement."*

** FTC: provided that "...that the net impression of its advertisement with such a **disclaimer** is non-deceptive."*

Not Totally
Eliminated



Add "disclaimer" in
chat for an example

Where We Are Today: No-Disclaimer Framework

FTC Ad Claim Framework: Specific Results

1. Specific claims are "Typicality" claims (Net Impression)

1.1 Substantiate that participants typically achieve the claimed result(s) (Net Impression)

-OR-

 1.2 Disclose Generally Expected Results ("GER"), and

2. Track participant results

3. Without disclaimers that contradict:

- Net Impression
- Duty to Track
- Generally Expected Results

"Old School" Max Disclaimer Strategy For Specific Results

Lurn, Inc. March 2, 2023

Deceptive:
Disclaimer
Contradicts
Overall Net
Impression/

Many of our products and promotions provide information about potential income you may earn. These representations are not intended to describe a certain outcome or even a typical outcome, but rather actual results from those who have had exceptional success. Some of these students have relevant prior experience or other advantages that helped them make the most of our course. Lurn offers no guarantee or warranty that you will realize the amount of income or revenue referenced in the promotions or the courses themselves. Lurn generally provides message boards and forums where students can share their successes but does not actively conduct research as to what is the typical outcome for individual offerings.

Deceptive
Disclaimer
Contradicts
Duty to
Track

Beginning 2009: 1.2 Solution

- * Overall Net Impression (ONI) is Not Results Oriented (Instead: Focus on Method, System)
- * Provide Testimonials of High Achievers Qualified With with GER

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FTC Ad Claim Framework: Specific Results

1. Specific claims are "Typicality" claims (Net Impression)

1.1 **Substantiate** that participants typically achieve the claimed result(s) (Net Impression)

-OR-



1.2 **Disclose** Generally Expected Results ("GER"), and

2. **Track** participant results

3. **Without** disclaimers that contradict:

- Net Impression
- Duty to Track
- Generally Expected Results

Context Matters
Context Matters
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Context Matters



LOIS GREISMAN

Associate Director for
Marketing Practices
Federal Trade Commission (FTC)

GER Example

General Example:

During a study consisting of ___ participants from May 1, 2025 to December 31, 2025;

- * The average gross revenue per month was \$____,
- * For those participants who had an online ad spend ranging from \$____ to \$_____.

GER Guidelines

2009 FTC Endorsement Guides

"Advertisers are **not required to identify a “typical consumer”** of their product and then determine what result that consumer achieved."

"Rather, the required disclosure in this circumstance is **“the generally expected performance in the depicted circumstances.”**

"Thus, advertisers are provided some **reasonable leeway to make this disclosure.**"

GER Example

General Example: ***“Most participants who [engage in the required actions]**

for [time period] earn about \$[median] per [period] after fees/ expenses.

About [X%] earn \$[higher result] or more. Individual results vary.”

GER Comments

- * The **full context** matters, not just the percentage or mean.
- * The FTC's guidance, including the 2023 Endorsement Guides, clarifies that "generally representative" is a **holistic consideration**.
- * Factors such as the **nature of the product**, the **type of claims** made, and the **overall impression** created by the ad are also important.

GER Guidelines

2009 FTC Endorsement Guides

"With meaningful disclosures, consumers not only would have a realistic sense of what they can expect from a product or service,

but could also take away the message that *if they dedicate themselves as much as the testimonialist did, they might achieve even more.*"

Context for
High-Achievers



GER Guidelines

2009 FTC Endorsement Guides

"For example, substantiation for a “generally expected results” disclosure could be extrapolated from valid, well-controlled clinical studies of patients matching the profile of the persons in the ad,

even though consumers’ real world results are not likely to match exactly the results in the clinical study.”

GER Guidelines

2009 FTC Endorsement Guides

"In some instances, advertisers may rely on **generally accepted scientific principles** (e.g., the average individual needs a net calorie deficit of 3,500 calories to lose 1 pound) to determine generally expected results."

GER Guidelines

2009 FTC Endorsement Guides

"In other cases, the advertiser may be able to **limit the scope of the disclosure** by limiting the circumstances depicted in the advertisement.

For example, if all of the testimonials used in an advertisement are clearly identified as persons who have been **members of a weight loss clinic for at least one year**, the disclosure can be based on performance data from that group.

In any event, the disclosure of generally expected results should **clearly identify the group from which the data were obtained**.

GER Guidelines

2023 FTC Endorsement Guides

- * Fewer than 20% achievers would not be generally representative
 - 2023 Guides: based on Example 2 Context
- * Not required to be based on "exact mathematical average" of users of the product
 - 2023 Guides: based on discussion of typicality/generally expected results

GER Example

Nutrisystem Example: * Real Success Story. Weight lost on prior program. Compensated for appearance. Expect to lose an avg 1-2 lbs per week.

* * Casting call participant. Complimentary program provided. Compensated for appearance. Expect to lose an avg 1-2 lbs per week.

† Based on a January 2025 customer survey with 520 High Protein meal plan customer responses.

GER Documentation

- * Keep your data and calculations supporting the GER (date-stamped)
- * Record how GER matches depicted circumstances, metrics, and statistical method you used to define GER
- * Maintain version history (which disclosure was used with which ad)
- * Refresh GERs when product, pricing, targeting, onboarding, policies, or traffic mix changes.

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Overall Net Impression ("ONI") is Key

- * ONI is typically the Sales Page Headline
- * Mention Specific Results (\$ or Lbs.) in the Headline and you're in trouble
- * Focus On: System, Method or Protocol



Headline: This is
NutriSystem's Overall
Net Impression ("ONI").

Take the guesswork out of weight loss!

A system, method, protocol
claim (*not a specific result
claim*).

Get everything you need to lose weight in one simple plan.
Delivered monthly with all your Nutrisystem meals included.

NutriSystem developed its ONI
with success stories in the form of
curated opinion testimonials.

Start your Nutrisystem weight loss success story!

Millions have done it: Lose weight and get healthy with a life-changing solution from Nutrisystem. Order today and start seeing results in your very first week.

Explore Weight Loss Plans ▶



Home > Success Stories

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Millions have done it: Lose weight and get healthy with a
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No Time Period for Weight Loss Claim

Lindsay

Reduces requirements for Substantiation & Typicality.

lost 47 lbs!*

"Within a few days, I started feeling completely different. I was shocked how much weight came off and it came off."

Specific result claim for weight loss triggers requirement to: (i) substantiate result is typical, or (ii) disclose generally expected results ("GER").

Lindsay landed her dream job as a pilot, and now that she lost the weight, her confidence is soaring!

[Read Lindsay's Story](#) ▼



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Paraphrasing

For Curated (Paraphrased) Opinion Testimonials

"Advertisers should not alter endorsements in ways that change their message or context."

"Paraphrasing is acceptable only if the resulting message remains truthful & non-deceptive."

**2023 FTC Endorsement Guides
Sec. 255.1(c)**

Storytelling With Curated Opinion Testimonials: More Effective Than Simple Testimonials & Ad Claims. NutriSystem is in control of the "story."

Curated Paraphrased

In 2014, Lindsay Burns landed her dream job as an international airline pilot. Throughout her career, Lindsay has gotten the chance to explore the world and its cuisine - having schnitzel and beer in Germany, wine and cheese in Paris, and pasta and pizza in Italy. However, always being on the road and indulging during her layovers eventually led to Lindsay gaining about 40 pounds, and six sizes, in the first few years of her career.

After seeing a photo of herself taken on her birthday, she realized the person in the photo wasn't a reflection of her. Lindsay had noted at this point that she felt mentally and physically sluggish, and everyday activities felt more cumbersome than they used to. Lindsay researched the Nutrisystem program, and felt like the convenience of pre-packaged meals could fit her on-the-go lifestyle.

Prior to joining Nutrisystem, Lindsay had tried things like calorie counting, only ordering salads, avoiding certain foods, but nothing seemed to work because of the lack of structure, and even healthy food choices were served in huge portions. She says "I was really discouraged. I was really frustrated with myself and the things that I had tried." But when she found Nutrisystem, losing weight became easy and effective.

Hybrid



Original thoughts before trying Nutrisystem

Lindsay admits that she had a preconceived notion that the food might not be good and was a bit hesitant to try it. However, during her first week, she said she was surprised about how good the food was. "I definitely didn't expect that. And I started really craving some of the items from Nutrisystem that I love so much."

Initial experience with Nutrisystem

"It was definitely a bit of a learning curve. As you make orders, you realize what things you might like better than others or what things might work better for travel." Lindsay says she ended up in a groove and is always excited to pull her favorite meals out of her bag and have them with her at all times.

She says "There was definitely a thrill in the success of finally having found something that worked for me." After so many years of ups and downs and trying different "solutions" that didn't work was extremely discouraging to Lindsay. She says "but finally Nutrisystem got me on track and there was no stopping me from there."

Hybrid

Early weight loss results on the Nutrisystem plan

"The early results were really quite surprising. Within a few days I started feeling completely different. I also noticed the weight on the scale started dropping off almost within the first week. I was shocked by how much weight came off and how fast it came off." Lindsay lost about 3 pounds in her first week on Nutrisystem.

Thoughts about Nutrisystem today

"The plan is super easy to follow. Even if you're on the road a lot, you can take all of your meals with you. Everything is perfectly portioned and planned out. All you have to do is just follow the plan and it works."



NutriSystem is in control of the "story."

**Curated
Paraphrased**

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Hybrid

Hybrid

Hybrid



Lindsay's favorite Nutrisystem meals

Breakfast: Cherry Cheese Rolls & Cinnamon Rolls

Lunch: Spinach Cheese Melt

Dinner: Chicken Bianca Pizza

Snack and Dessert: Ice Cream Sandwich & Lemon Zest Cake

Lindsay says the food is good, really good. "There are so many tasty choices, it's impossible to get bored or tired of the same old thing. With Hearty Inspirations® included, there are more than 100 meal choices."

"The flavors are delicious and often the foods feel 'indulgent'." And, Lindsay says she's getting a nutritious well-balanced diet.



Curated



Hunger levels while on Nutrisystem

Lindsay says she did feel hungry when originally transitioning to Nutrisystem because she was used to eating much larger portion sizes and more frequently than she needed to. Now that her body is used to Nutrisystem's portion-controlled meals, she rarely feels hungry, but will grab a handful of almonds in between meals on days that she has a tough workout.

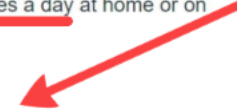
Context



Lindsay's exercise routine

Because Lindsay's job requires her to sit in one place for several hours at a time, she likes to stay active outside of work. Lindsay has a stationary bike and a treadmill, taking video classes when she's home. Other than that, Lindsay tries to walk about 5 miles a day at home or on layovers, exploring all of the wonderful cities she travels to.

Emotion



Favorite non-scale victories

Lindsay lost 47 pounds, but that isn't the only thing she's proud of along her weight loss transformation. Lindsay says some of the best things about her weight loss include being able to play with her energetic young nieces without getting tired out and fitting into old clothes, including her original work uniform.

"My physical shape is better, but my mental health is also much improved as a result of dropping the weight, feeling like myself again, and knowing I've made my health a priority."

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GER Disclosure

Playing the Typicality "Game": Weight Loss Claim Generally Expected Results Disclosure ("GER")



*Results vary based on starting weight in program adherence.
Expect to lose avg of 1-2 lbs per week.

Follow-Up To Lindsay

- * Several Shorter Success Story Testimonials
- * Each provides specific results (> GER)
- * Each contains the GER

Marketing Strategy

- * ONI is limited to system, method, protocol
- * Use Opinion/Success Testimonials
- * Each Includes Specific (High-Achiever) Results
 - * \$ for making money
 - * Lbs for weight loss
- * Qualify Specific Result Claims w/ GER
- * Specific results may be greater than GER
- * No: "Your Results May Vary"

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FTC Ad Claim Framework: Specific Results

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Time for Q&A

Your
800lb
Gorilla...



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