



Advanced Media and Technology Law

Advertising and Promotions Law



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FTC Warns Non-Compliant Marketers and Influencers to Clearly Disclose Relationships

In a sweeping warning to industry, the Federal Trade Commission has directly contacted both advertisers and influencers to remind them that social media posts promoting or endorsing products must clearly and conspicuously disclose material connections between the endorser and the advertiser. This month, following a review of Instagram posts by celebrities, athletes and other influencers, the FTC staff sent out more than 90 warning letters citing a variety of failures to comply with the FTC's guidelines on endorsements and disclosures.

"What we saw raised concerns about whether some influencers are aware of truth-in-advertising standards about endorsements and disclosures," the FTC noted in an April 19 blog post. "Our goal is to influence influencers to comply with those established principles in their Instagram posts." The FTC did not publicly release the letters or the names of the recipients.

The letters cited several disclosure-related missteps in influencers' Instagram posts. The agency pointed out that consumers viewing Instagram posts on mobile devices typically see only the first three lines of a post unless they click on the "more" button, which many consumers may not do. Therefore, the agency advised influencers to disclose any material connection to the product or brand above the "more" button.

In addition, the FTC noted that consumers may not bother reading a long string of hashtags, tags or links at the end of a post, so placing a disclosure in that string would not be considered "conspicuous"

as required by the agency's guidelines. The agency also explained that some tags or hashtags that were intended to serve as a disclosure weren't clear enough, since many consumers probably won't understand disclosures meant to indicate the post was sponsored, such as "#partner," "#sp" and "Thanks [Brand]."

Along with the letters, the FTC sent a copy of its "Endorsement Guides," which spells out how advertisers and endorsers must clearly and conspicuously disclose material connections between an advertiser and the endorser or influencer that promotes its products in blog posts and on social media. According to the Endorsement Guides, a "material connection," such as payment, the gift of a free product, or a business or family relationship, could affect the weight or credibility that consumers give the endorsement. Influencers should clearly let consumers know about that connection, and marketers have an obligation to ensure they do.

The letters followed petitions sent to the FTC in 2016 by Public Citizen, a nonprofit advocacy group, that catalogued more than 150 examples of Instagram posts that Public Citizen asserted violated the agency's disclosure policies. Urging the FTC to investigate, Public Citizen called out posts for top brands by big-name celebrities with millions of Instagram followers, such as David Beckham for H&M and Ryan Reynolds for Piaget, as well as posts by individuals with only a

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few hundred followers for a variety of fashion, beauty, fitness, and food and beverage products.

Public Citizen also noted a few trends that it asserted contributed to noncompliance because of a lack of awareness about the FTC guidelines. Specifically, it noted that “lesser known celebrities and influencers with smaller followings are dominating the influencer market on Instagram” and that websites “specifically designed to connect brands with average Instagram users for the purpose of advertising products” have recently emerged, including websites owned by Influenster and Bzzagent.

In its blog post, the FTC offered compliance suggestions for including disclosures in Instagram posts:

- Keep disclosures clear and unambiguous. Avoid using vague hashtags or tags to highlight material connections. “There’s no one-size-fits-all way to make that disclosure, but an unfamiliar abbreviation or cryptic word subject to multiple interpretations probably won’t do the trick,” the FTC notes.
- Make disclosures hard to miss. What you say and where you say it matters, but so does how it looks. Be aware that disclosures may not appear the same way on different devices.
- Steer clear of posting disclosures in a jumble of hashtags at the end of the post. In other words, “Avoid #HardtoRead #BuriedDisclosures #inStringofHashtags #SkippedByReaders.”

In the past few years, the FTC has levied and settled deceptive advertising charges against several businesses that use influencers or endorsers in marketing plans encompassing a range of social media. The warning letters are an important signal to the industry that 1) the failure to disclose material connections remains an enforcement priority for the FTC’s Bureau of Consumer Protection and 2) the responsibility to provide clear and conspicuous disclosures does not fall only on brands but also on influencers and other parties within the social media ecosystem.

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