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The FTC 'Educates' Celebrities & Social Media Influencers on its Endorsement Rules

As the power of Instagram and other social media platforms as marketing tools rises, so does the dollar figure of contracts between brands and the social media influencers (celebrities, athletes, reality stars, etc.) they use to endorse their products – some contracts are reported to be in the seven-figures. Couple this with the influencers' ability to reach millions of consumers and the Federal Trade Commission (FTC) is taking notice. The FTC continues to keep a close eye on advertising activities by social media influencers as well as the brands themselves but historically, the FTC's enforcement has been limited only to brands. However, in a much anticipated move, the FTC recently sent 90 letters to various influencers (including 45 celebrities) and brands "educating" them on its advertising disclosure requirements.

The FTC monitors advertising activities pursuant to the Federal Trade Commission Act, which charges the FTC with, among other things, preventing "unfair or deceptive acts or practices," including advertising that is false or misleading in any material way. The FTC published the [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) (also known as the Endorsement Guides) to provide guidance regarding how the FTC evaluates certain endorsements and testimonials in advertising.

According to the Endorsement Guides, if there is a "material connection" between an advertiser and an endorser, the connection must be "clearly and conspicuously disclosed, unless it is already clear from the context of the communication." This applies to both advertisers *and* endorsers. A "material connection" is something that may affect how a consumer may assess the credibility of the endorsement, such as a close relationship, the gift of a free product, or a payment. In other words, if an endorser/influencer is paid by a brand and endorses the brand or its product(s) on social media, the influencer's followers should be made aware of such payment so the followers can evaluate how much weight to afford the influencer's (paid) endorsement of the product.

But, in the realm of social media, space can be limited and messages may be interpreted differently by consumers, so how should a material connection be disclosed? Following are a few guiding principles from the FTC:

- > All disclosures should be unambiguous. A consumer should not have to interpret what a purported disclosure means – it should be apparent. For example, the FTC believes that neither “thank you [Brand]” nor “#partner” is clear enough to disclose a material connection with a brand.
- > All disclosures should be easy to find and read. Consider how the post and disclosure will appear to a consumer in social media. Is the post long? If so, will a consumer have to click “more” to see the disclosure? Is the disclosure #buried #in #a #long #stringofhashtags that may make it harder for a consumer to read? If any of the above is true, the disclosure likely will not be effective.
- > Video disclosures should be embedded in the video. In the case of video endorsements, a disclosure could be separated from the video depending on its placement or if it is shared in different social media outlets. For instance, if the disclosure is made only in a comment or caption to a video, the comment may be buried as other people comment on the video and the caption may disappear when the video is shared in other social media outlets. To avoid such a situation, any disclosure to a video should be embedded directly in the video. To help with that process, YouTube has a feature that will embed a standard disclosure into a video if the user simply checks the box that says “video contains paid promotion” in “Advanced Settings.”

The FTC letters signal the FTC’s increased attention toward social media and influencer marketing. Accordingly, brands should (1) review the Endorsement Guides, the FTC’s informal guidance document, [FTC’s Endorsement Guides: What People are Asking](#), and the FTC’s [press release](#) about the influencer letters and (2) consult with legal counsel familiar with the legal issues involved in such campaigns to make sure they fully understand the FTC’s requirements for advertising.

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