

FTC ISSUES GUIDANCE ON PROPER DISCLOSURES FOR SOCIAL MEDIA INFLUENCERS

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Many retailers and online businesses leverage social media to boost brand awareness and promote product sales. The FTC recently has issued guidance on what social media influencers need to do when endorsing products. The rules are common sense, but influencers may not adopt them completely, creating risk for themselves and potentially for businesses whose products they promote. Marketing teams responsible for sponsorships, partnerships and endorsements should review the FTC's new guidance and ensure that their influencers are being clear and direct about sponsored product placements. While the FTC indicates that influencers have the obligation to ensure their promotions are truthful, plaintiffs, in the context of potential consumer class actions, may attempt to attribute risk back to your business.

FTC's *Disclosures 101 for Social Media Influencers* is an easy read (published November 5, 2019), and according to the FTC's press release of the same date, it updates the *FTC Endorsements Guides* and a related *Frequently Asked Questions* document. A key overarching theme is that the "endorsement message should make it obvious when [the influencer has] a relationship ('material connection') with the brand." According to the FTC, good disclosure is "important because it keeps [the influencers] recommendations honest and truthful, and it allows people to weigh the value to [the] endorsement."

When to Disclose. In this section, the FTC highlights a number of important issues including:

- (a) Disclosure is required if the influencer has any "financial, employment, personal, or family relationship with a brand."
- (b) Anything of value, including free products or discounts counts as "financial," not just payment of money.
- (c) Each recommendation should have a disclosure, even if the influencer may feel that her or his audience may be aware of brand relationships.
- (d) Endorsements include "tags, likes, pins" or other more specific mentions of the product.

(e) Influencers should consider if US consumers will be impacted even if the messaging is from abroad.

How to Disclose. The FTC prescribes "simple and clear language" that is "hard to miss." In other words both content and placement matter. Either can prove troublesome. Here is where influencers are likely to fall down. The FTC offers concrete examples to drive home the point of **visibility**: "superimpose the disclosure" over a picture; make disclosures in both audio and on screen for videos; for live stream endorsements, repeat the disclosure at periodic intervals. The FTC also promotes utilization of clear terms and phrases like the following: "advertisement" "ad" "sponsored" "[Brand]Partner" "[Brand]Ambassador" "#ad" "#sponsored". The FTC staff counsels against abbreviations, buried lists, or reliance on platform disclosures. And good disclosure should be in the same language as the endorsement, so the intended audiences can read and understand it.

Be Truthful. In a final section, the FTC offers common sense truth in advertising nuggets. Influencers cannot misrepresent their interactions with the product. Specific examples offered:

- If the product has not been used, the influencer cannot talk about their experience.
- The influencer cannot say a product is "terrific" when in actuality it was "terrible."
- And influencers cannot make claims which will require substantiation, like "scientific proof."

Both the FTC Endorsement Guide and the FAQ contain more specific detail about various scenarios and requirements. Consumer protection methods continue to evolving as the internet and numerous social media platforms become ubiquitous in consumer's lives. While the FTC likely cannot police every product and every endorsement, retailers and business who value their customers should help drive transparency in product endorsements. Doing so should drive customer brand loyalty over the longer term. Doing so also will mitigate the risk of potential consumer deceptive or misleading advertising claims including potential class action litigation or other adverse reputation events.

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