

FTC TELLS INFLUENCERS TO DISCLOSE CONNECTIONS ON SOCIAL MEDIA

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POSTED IN ONLINE CONTENT, UNITED STATES



The Federal Trade Commission (FTC) sent more than 90 letters to celebrities, athletes and other influencers – as well as to marketers – highlighting the need for influencers to “clearly and conspicuously” disclose their relationships to brands when they promote or endorse them on social media. The FTC letters mark the first time that the FTC has reached out directly to social media influencers, indicating that influencers could be subject to their own FTC actions if they fail to disclose their relationships on social media.

FTC’S ENDORSEMENT GUIDES

The FTC’s Endorsement Guides, which apply to endorsers and marketers, provide that if there is a “material connection” between an endorser and the marketer of a product that might affect the weight or

credibility that consumers give an endorsement, that connection should be “clearly and conspicuously” disclosed. A material connection includes a business or family relationship, a monetary payment and even the provision of free products to an endorser.

FTC’S LETTERS

The FTC learned about the posts after receiving petitions from Public Citizen and related organizations, and sent the letters after reviewing a sample of Instagram posts by influencers making endorsements or referencing brands without any disclosures. Notably, before sending the letters, the FTC did not conduct an investigation to determine whether the brand mentions in the posts were sponsored or organic.

In its letters to influencers, the FTC referenced each influencer’s Instagram post(s) endorsing the specific brand and reminded them of their obligations under the FTC Endorsement Guides to disclose their material connection in “unambiguous language” and to make the disclosure “stand out.”

The FTC specifically referenced Instagram streams on mobile devices, observing that consumers typically see only the first three lines of a longer post unless they click “more” and that many consumers do not click “more.” Therefore, according to the FTC, any material connection should be disclosed above the “more” button.

The letters also noted that readers may skip over multiple tags, hashtags or links, especially where they appear at the end of a long post. In the FTC’s view, a disclosure placed in such a string was not likely to be “conspicuous.”

Last, the FTC advised that certain disclosures in Instagram posts – such as “#sp,” “Thanks [Brand],” and “#partner” – were not sufficiently clear because “many consumers” would not understand that they meant that an Instagram post was sponsored. According to the FTC, while there is no one-size-fits-all way to make a disclosure, influencers should avoid unfamiliar abbreviations or words that are subject to multiple interpretations.

FTC’S RECOMMENDATIONS

The FTC’s letters to marketers provided similar guidance, as well as the following recommendations:

- Companies with a social media policy should evaluate how it applies to endorsers’ posts;
- Companies that do not have a social media policy should consider implementing one; and
- Companies should review their social media marketing to ensure that posts contain necessary disclosures and that they are clear and conspicuous.

TAKEAWAYS

The FTC’s letters should serve as a reminder for all influencers and marketers, even those who did not receive the letters, to review their social media policies in the context of the FTC’s Endorsement Guides.

In particular, disclosures should be:

- Unambiguous and should not include unfamiliar, cryptic or vague terms to explain the relationship between an influencer and a marketer;
- Hard to miss, rather than hard to find. In fact, the FTC’s position is that people should be able to spot a disclosure “easily;” and

- Easy to read and not placed in a “jumble of hashtags” that readers are likely to skip over because they are not conspicuous.

THE BOTTOM LINE

The FTC’s letters to influencers and marketers highlight the importance of ensuring that “material connections” between influencers and marketers are “clearly and conspicuously” disclosed. Marketers should review their social media marketing policies because failure to comply could result in action against the marketer, as well as any of its influencers who fail to disclose their material connections.

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