

Understanding the Legalities of Influencer Marketing



A Tishkoff PLC eBook



Table of Contents

Introduction	01
Influencer Marketing vs. Celebrity Endorsements	02
Legal Framework: FTC Act and Endorsement Guides	03
Disclosure Requirements	04
Liability Risks	05
Recent Enforcement Actions	06
Beyond Disclosure: Additional Legal Concerns	07
Industry-Specific Considerations	09
Conclusion	11
Contact Us	12
Further Reading	13

Introduction

Influencer marketing has quickly become an essential strategy for businesses looking to leverage digital channels for brand promotion. Companies utilize influencers—individuals who have established credibility and a significant following on platforms like Instagram, YouTube, and TikTok—to endorse their products and services. This method capitalizes on the influencer's perceived authenticity and targeted audience reach. However, influencer marketing is subject to complex legal requirements, particularly regarding truthfulness, transparency, and consumer protection. Navigating these regulations is critical to avoid potential legal liability, regulatory actions, and reputational harm.

Influencer marketing has emerged as a fundamental strategy in digital advertising. Brands utilize influencers' credibility and targeted reach for endorsements. However, this approach carries significant legal implications primarily governed by consumer protection laws and regulations by the U.S. Federal Trade Commission (FTC). Noncompliance can lead to regulatory actions, financial penalties, and lawsuits. This paper summarizes critical legal considerations in influencer marketing.

Please note this eBook should be used for learning and illustrative purposes. It is not a substitute for consultation with an attorney with expertise in this area. If you have questions about a specific legal issue, we always recommend that you consult an attorney to discuss the particulars of your case.





Influencer Marketing v. Celebrity Endorsements

Influencer marketing typically involves partnerships with individuals who possess specialized knowledge within particular niches and maintain dedicated followings on social media. These influencers create authentic, engaging content tailored to highly specific audiences, allowing brands to target relevant demographics effectively. In contrast, celebrity endorsements traditionally rely on the broad fame of actors, athletes, or musicians rather than niche expertise.

Celebrities bring immediate brand recognition but typically command higher fees and offer less creative input, as messaging and content are often tightly controlled by brands. Regardless of whether an influencer or a celebrity is utilized, legal obligations around truthfulness, substantiation of claims, and clear disclosure of paid relationships apply consistently.

Legal Framework: FTC Act and Endorsement Guides



The Federal Trade Commission (FTC) primarily governs influencer marketing through Section 5 of the FTC Act, prohibiting deceptive advertising practices. The FTC Endorsement Guides provide specific interpretations to clarify legal obligations. Endorsements must reflect the genuine opinions and experiences of the influencer, and all claims made must have reliable evidence supporting their accuracy. The FTC explicitly mandates that any relationship or compensation between influencers and brands be transparently disclosed to consumers. Claims suggesting atypical results or extraordinary product performance require explicit disclosure of typical consumer outcomes to avoid misleading audiences.

Recent updates to these guidelines emphasize clear definitions of what constitutes an endorsement, expand liability to include agencies and intermediaries, and underscore special attention required for endorsements directed towards children.



Disclosure Requirements

The FTC defines a "material connection" broadly, encompassing payments, free products, employment relationships, family ties, or other incentives that might influence an influencer's endorsement. To comply with FTC standards, disclosures must be clear and prominently placed, ensuring they are unavoidable and easily understood by consumers. These disclosures should align with the endorsement's format—visual endorsements require visual disclosures, audio endorsements need audio disclosures, and mixed formats require both.

Social media endorsements should explicitly indicate the material connection at the beginning of posts or videos, using straightforward terms such as "Ad," "Sponsored," or "Paid Promotion." It is insufficient for disclosures to be hidden among hashtags, footnotes, or behind expandable links. Platform-specific disclosure tools provided by social media companies, such as Instagram's "Paid Partnership" tag, generally require supplemental explicit disclosures to meet FTC standards fully.

Liability Risks

The legal landscape of influencer marketing presents liability risks for all involved parties—brands, influencers, and intermediaries such as advertising agencies and public relations firms.

Brands bear significant responsibility, potentially facing liability for any false or misleading claims made by influencers or failures to disclose material connections properly. Brands are obligated to educate their influencer partners about compliance requirements and actively monitor influencer content to ensure adherence to legal standards.

Influencers themselves are personally accountable for the content they create and post. They may incur liability for deceptive statements, insufficient disclosures, or endorsements of products they have not genuinely used or verified. Influencers must independently ensure their endorsements meet all FTC guidelines.



Intermediaries, including marketing and public relations agencies, also face direct liability if involved in creating or distributing deceptive endorsements. These agencies must implement internal controls to verify compliance and mitigate liability.

Consequences for noncompliance are serious and can include FTC enforcement actions, monetary penalties, corrective advertising mandates, and private class-action lawsuits seeking significant financial damages. Additionally, violations often result in considerable reputational damage.

Recent Enforcement Actions

Regulatory actions and private lawsuits in recent years highlight the significant legal risks associated with noncompliant influencer marketing practices. For example, regulatory authorities have taken action against companies and influencers who failed to disclose material connections, made unsubstantiated claims, or engaged in deceptive promotional tactics. In these instances, both financial penalties and mandated corrective measures were implemented.

Similarly, private class-action lawsuits have targeted brands and influencers, alleging deceptive advertising practices due to inadequate disclosure of paid relationships or misleading claims about products. These lawsuits have sought substantial monetary damages and have contributed to a heightened awareness and scrutiny of influencer marketing practices across industries.



Beyond Disclosure: Additional Legal Concerns

➔ Intellectual Property

Brands engaging in influencer marketing must address intellectual property rights clearly. Agreements between brands and influencers should specify the ownership and licensing terms of influencer-created content. Misunderstandings about copyright ownership can lead to significant disputes. Influencers must also ensure they have secured appropriate permissions or licenses for any third-party content used within their posts to avoid infringement liability.

➔ Contracts

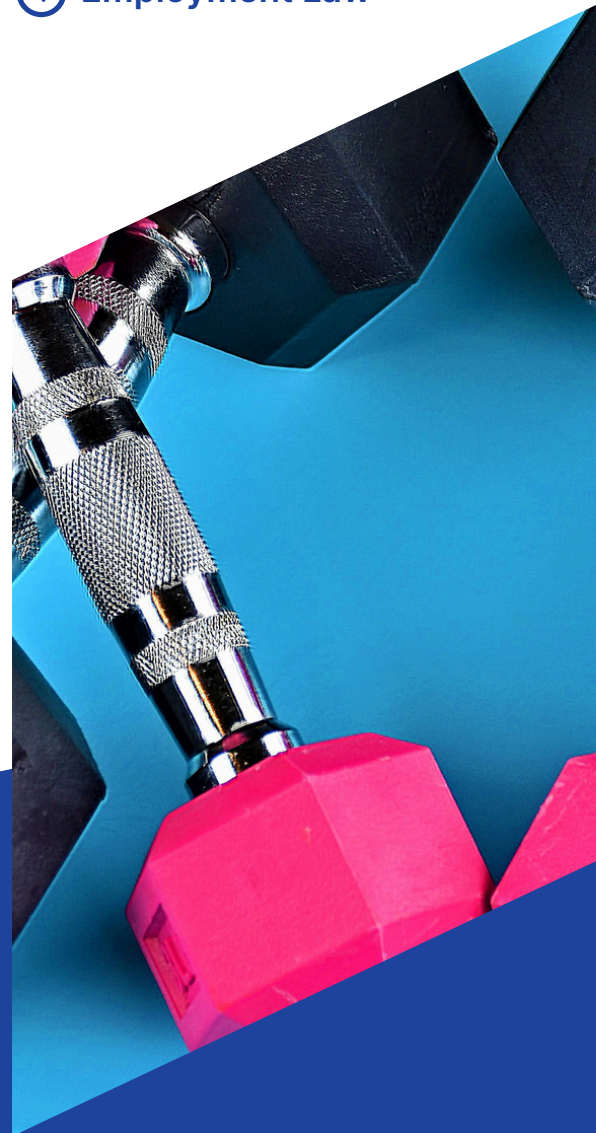
Clear and comprehensive contracts between brands and influencers are essential. These agreements should detail expectations for deliverables, compensation terms, content approval processes, intellectual property ownership, and exclusivity arrangements. Contracts must explicitly mandate adherence to FTC compliance requirements, including clear disclosure obligations. Additionally, contracts should include indemnification clauses that allocate responsibility for potential breaches or violations.

➔ Intellectual Property

➔ Contracts

➔ Data Privacy

➔ Employment Law





➔ Data Privacy

Influencer marketing campaigns in the United States must adhere to applicable privacy laws, notably the California Consumer Privacy Act (CCPA) and similar state-level privacy statutes. Campaigns involving user data collection require transparent privacy notices clearly outlining data use and collection practices. Explicit consumer consent for data collection activities, secure data handling practices, and adherence to consumer data rights under relevant privacy statutes are mandatory to mitigate legal risks.

➔ Employment Law

The proper classification of influencer relationships—whether as independent contractors or employees—is critical to avoid legal and financial liability. Brands must assess the nature of their relationship with influencers against criteria defined by the Internal Revenue Service (IRS) and various state employment laws. Misclassification can lead to substantial penalties, including liability for unpaid taxes, benefits, overtime, and regulatory fines. Contracts must clearly define the relationship and responsibilities to avoid unintended employee classification.



Industry-Specific Considerations



Real Estate

Construction

Employment

In addition to general compliance, influencer marketing activities in specific industries require adherence to additional regulatory standards.

For example, real estate influencers must comply with state licensing laws and federal Fair Housing Act requirements, including clear disclosure of licensing status and avoidance of discriminatory advertising practices. Similarly, influencer marketing in the construction industry demands accurate substantiation of claims regarding product performance, safety, or project timelines.

Employment law considerations extend to drafting enforceable non-compete and exclusivity clauses within influencer agreements, aligned with relevant state-specific restrictions.



Conclusion

Compliance with legal requirements in influencer marketing is essential to mitigate significant regulatory, financial, and reputational risks. Brands should establish robust internal compliance programs, including clear policies, detailed influencer agreements, regular training sessions for influencers, and proactive content monitoring systems.

Ongoing education about evolving FTC guidelines, emerging litigation trends, and specific state privacy and employment laws will further enhance compliance efforts. By rigorously adhering to these legal standards, brands can successfully navigate the complexities of influencer marketing while minimizing associated risks.



Questions about business law or litigation?

Contact Tishkoff

Tishkoff PLC specializes in business law and litigation. For inquiries, contact us at www.tish.law/contact/. & check out Tishkoff PLC's Website (www.Tish.Law/), eBooks (www.Tish.Law/e-books), Blogs (www.Tish.Law/blog) and References (www.Tish.Law/resources).

Tishkoff PLC
407 North Main Street
Ann Arbor, Michigan 48104



Tish.Law



tishkoffplc@tish.law



855.TISH.LAW

Further Reading

Federal Trade Commission. (2009). *Guides Concerning the Use of Endorsements and Testimonials in Advertising*. FTC.

Federal Trade Commission. (November 2019). *Disclosures 101 for Social Media Influencers*. FTC.

Justia. (December 2024). *Social Media Influencer Marketing & Related Legal Issues*. Justia.

Verna, Anthony M. (June 24, 2024). *What Are Some FTC Guidelines for Social Media Influencers?* Verna Law.

Talley, Monica Riva. (September 28, 2023). *FTC Guidelines Influence How Influencers Influence*. Sterne, Kessler, Goldstein & Fox.

Pierce Atwood LLP. (December 20, 2019). *Attention Brand and Social Media Influencers - Recent FTC Guidance for Avoiding FTC Act Liability*. Pierce Atwood LLP.

Kohrman Jackson & Krantz LLP. (January 3, 2025). *Three Legal Mistakes Influencers Make and How to Avoid Them*. JD Supra.

Dunn, Heather and Carissa Bouwer. (November 3, 2021). *Brands and Influencers in the Spotlight as FTC Focuses on Civil Penalties for Deceptive Advertising*. DLA Piper.

Bruno, Sarah L., et al. (February 25, 2025). *FTC Starts 2025 with a Focus on Safeguarding Kids*. ReedSmith.

Vandernick, Rachel. (January 20, 2022). *Influencer Advertising: Do's, Don't's, and FTC Disclosures*. The Vander Group.

Taylor, Hannah. (April 14, 2025). *Beyond the FTC: Class Actions Hit Influencer Marketing*. Frankfurt, Kurnit, Klein & Selz.