

Client Alert

April 2017

FTC: Social Media Influencers and Brands Must Disclose Ties

On April 19, 2017, the Federal Trade Commission [issued warnings](#) to more than 90 brands and “influencers” that their social media posts should more clearly and conspicuously disclose brand connections. The warning letters follow petitions filed by consumer advocacy groups aimed at influencer advertising on Instagram. The FTC’s warning letters show that the agency is committed to capitalizing on its recent enforcement actions against brands and influencers, and will continue to scrutinize social media compliance with the [Endorsement Guides](#).

The FTC issued two sets of letters, one to [brands](#) and another to [influencers](#). Both identified specific social media posts and stated that any ‘material connection’ that might affect the weight or credibility that consumers might give an endorsement should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication. Examples cited of material connections were business or family relationships, monetary payments and the provision of free products to the endorser.

The FTC offered a few guideposts for making disclosures both clear and conspicuous:

- The disclosure should use unambiguous language.
- The language should stand out.
- The disclosure should be noticeable. Consumers viewing posts on mobile devices should not have to click “more” or scroll to find the disclosure.
- Avoid putting the disclosure in a string of multiple hashtags, especially at the end of a long post.
- Avoid disclosures that consumers may not understand, such as “#sp,” “Thanks [Brand]” or “#partner.”

Key Takeaways for Companies Using Social Media Influencers

- The FTC is closely monitoring social media endorsements.
- Consider developing or updating social media policies that address oversight of influencer posts.
- Spot check social media posts to make sure they contain clear and conspicuous disclosures.
- Take swift action when you come across potential problems. Ignoring them can result in unwanted liability.

Hunton & Williams LLP has extensive experience in counseling companies on advertising, marketing and other consumer protection issues. Our practice includes a number of FTC alumni, including the former Chief of Staff to the Bureau of Consumer Protection’s Division of Advertising Practices. We are well situated to counsel clients on compliance with FTC advertising guidelines.

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