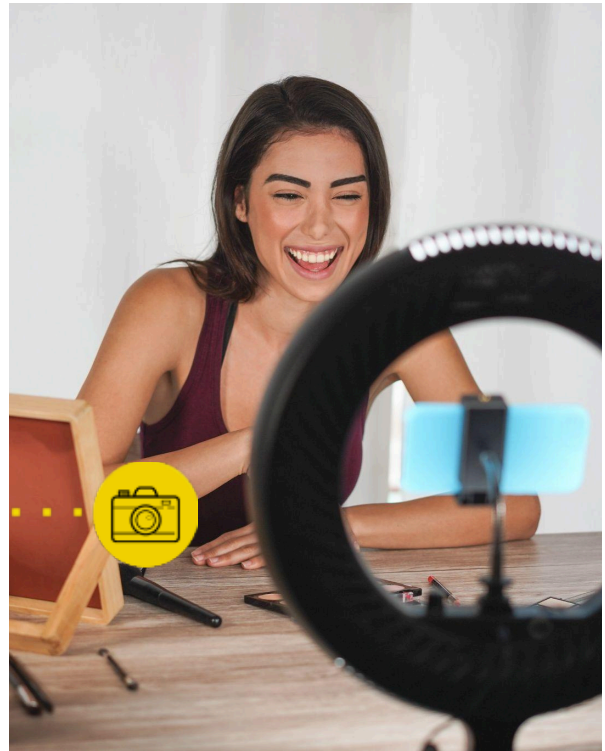


Ensuring FTC Compliance with Influencer Marketing



Social Factor Point of View

Summary

Working with influencers is an essential part of the marketing mix for most brands. In June 2023, the [Federal Trade Commission](#) (FTC), the primary regulatory body for consumer protection in the United States, made its first significant updates since 2009 regarding when and how influencers must disclose their relationships with brands on various platforms. These updated guidelines address the evolving world of influencer marketing and online endorsements.

Brand stakeholders and their supporting agencies are key players and the backbone of safeguarding legal compliance and monitoring influencer posts for proper disclosures. Adherence to specific guidelines and contract templates is not just a requirement, but a responsibility to ensure influencer relationship integrity. Influencers, too, play a vital role by clearly disclosing brand relationships in their social media posts. When working with influencers, a designated process to address ongoing compliance through monitoring and corrective actions is necessary to protect stakeholders.

FTC Endorsement Guidelines

Following is a summary of the most significant changes to the [FTC Endorsement Guides](#). The FTC also created a [guidance resource](#) addressing additional questions people have asked.

Clear and conspicuous disclosure

Disclosures must be unavoidable and easily understandable by consumers, especially on social media platforms. This applies to all types of content, including posts, stories, videos, and live streams. Disclosures are legally required, so attempts to hide behind a “more” link, for instance, won’t suffice.

Endorser liability

Influencers and brands can be held legally responsible for misleading or unsubstantiated claims about a product or service. As influencer endorsement can impact consumer perception, all product claims must be true, accurate, and supported by evidence. In the event consumers fall for misleading or fraudulent product claims, they can sue the influencer or the brand.

Intermediary liability

Advertising agencies, PR firms, and other intermediaries involved in crafting or disseminating deceptive endorsements may also be held liable.

Fake reviews and deceptive practices

The FTC emphasizes that companies must avoid manipulating or suppressing online reviews to misrepresent consumer sentiment.

On its website, the FTC offers comprehensive resources to assist influencers and brands in complying with the updated guidelines. These include "[Disclosures 101 for Social Media Influencers](#)" and other guidance specifically crafted for [Advertising and Marketing](#) regulations. This reaffirms the FTC's commitment to supporting

influencers in their compliance efforts, providing a safety net, and ensuring a transparent and ethical influencer marketing environment.

Guidance for Brand and Agency Stakeholders

Requirements for Influencer Relationships

[Different agreements](#) are necessary depending on whether the brand or an agency owns the influencer relationship. For instance, if the brand owns the relationship, they may use a direct agreement with the influencer. On the other hand, if an agency owns the relationship, it may need an agreement with the brand and a separate agreement with the influencer. Agreements will also vary depending on how you work with the influencer. Are they creating short-form or long-form content? Will they have to make any appearances? What fees will or won't be covered? Agencies must ensure compliance with FTC Guides and brand guidelines while following agreed-upon contracting and legal processes.

Compliance Requirements (Paid)

- If an influencer is paid to post on social media, they must sign a written agreement.
- Agreements vary based on the influencer's reach and the nature of their engagement (i.e., long-form for those with 100,000+ followers or extended engagements, short-form for smaller or shorter engagements).
- Agencies acting on the brand's behest must use brand templates.
- Agencies owning the relationship use their own templates but must meet compliance requirements.

Compliance Requirements (Hospitality, Gift Cards, Freebies)

Individuals receiving hospitality or freebies without an obligation to post must be reminded to disclose their relationship with the brand if they choose to post.

Guidance for Influencers

Influencers must follow FTC Guides and brand guidelines when posting.

As stated above, disclosure must be clear and unavoidable. Influencers can use specific hashtags (e.g., #Ad, #(Name of Brand Ad)) or brand-approved phrases and tags. For instance, influencers can use #Sponsored when promoting a brand's product or service.

Disclosure requirements also vary for short-term and long-term engagements. Short-term engagements typically use hashtags like #Ad, while long-term engagements use #(Name of Brand Partner).

Social Governance Management Process

- The compliance monitoring process involves signing contracts, ensuring they are correctly entered into your brand or agency's payment system, and monitoring for non-compliance once the influencer has created and/or posted content.
- The relationship owner is responsible and liable for compliance.

Additional Resources

Brands should provide as many resources as possible for influencer relationships, including influencer checklists containing information such as:

- Required disclosures
- Brand guidelines
- Content and shooting guidelines
- A signed contract

These serve as a comprehensive guide to help influencers understand and comply with FTC guidelines and brand requirements.

Our Takeaway

The [FTC endorsement guideline](#) updates aim to provide transparency and full disclosure between influencers and consumers. The FTC clarifies what is paid and

what is not, and it provides consumers with an understanding of the nature of influencer content. Additionally, the FTC can investigate and prosecute brands, influencers, and agencies involved in falsifying information, with [civil penalties of up to \\$51,744](#) for each infraction. Compliance is increasingly vital as influencers become integral to advertising campaigns, underscoring the urgency and importance of adhering to guidelines.

Do you have questions? We have answers. Let's connect over at socialfactor.com/contact or sales@socialfactor.com.