

SOCIAL MEDIA

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Influencers

Disclosure Basics

Do you recommend or endorse products?

If you work with brands to recommend or endorse products, then you MUST comply with the Federal Trade Commission (FTC) laws when making such recommendations.

HIGHLIGHTS

Learn when to disclose

When you have any financial, employment, personal, or family relationship with a brand.

Learn how to disclose

Make sure people will see and understand the disclosure.

Learn what to disclose

Must make a good disclosure of the type of relationship you have with a brand. It's not just about money.

What else to know

It's all about truth in advertising and making certain the public isn't misled.

The FTC is coming & **It's Your Responsibility**

As an influencer, it is your responsibility to make sure that full disclosure of your relationship to a brand is made. It is also your responsibility to be familiar with the FTC's Endorsement Guides, and to comply with the FTC's Rules and Regulations against deceptive advertising. As a word of caution, it's not sufficient to rely on others to do it and get it right for you. Take the initiative and learn and understand these rules. Your followers will thank you.

“... the FTC wants to ensure that viewers of endorsements are getting reviews that are honest ...”

FTC Basics for Social Media Influencers

by Andrew J. Contiguglia, Esq.

The United States Federal Trade Commission (FTC) is tasked with stopping deceptive advertising practices. This White Paper, based off the FTC’s Endorsement Guide, helps outline about how advertisers and endorsers can stay on the right side of the law.

Applies to Social Media

The FTC Endorsement Guide applies to social media. Truth in advertising is important in all media whether its new or old. Social media might be relatively new, but it’s still media.

The FTC requires advertisers and endorsers to disclose their connections with promoting a product if the connection “might materially affect the weight or credibility of the endorsement.”

As an influencer, if you endorse a product through social media, your endorsement message should make it obvious when you have such a “material connection” with a brand.

Basically, if you have any personal, family, or employment relationship or financial relationship - like getting paid

by the brand or them giving you free or discounted services, that relationship must be disclosed.

Why Disclose?

Social media influencers are held to the same standards as all other advertisers. This boils down to truth in advertising and the credibility of a valuable endorsement.

Getting free stuff for a positive review affects the credibility of the review you’re giving. And the FTC wants to ensure that viewers of endorsements are getting reviews that are honest and not just a paid advertisement.

Telling your followers about these material connection relationships is important because it helps keep your recommendations honest and truthful, and it allows people to properly weigh the credibility

and value of the endorsement you are giving.

An example

Let’s say you’re a blogger, Instagram influencer, or YouTube creator:

If a company pays you to provide a review of one of its products, or, if a company provides you with a free product to review, that connection needs to be disclosed to your followers.

As an influencer you should advise your audience that you were given such consideration for your review. Compliance falls on your shoulders as the influencer, not the product provider or other 3rd party platforms, e.g. Instagram. You must ensure that your claims about the products or services can be substantiated and are not deceptive or misleading.

Keep in mind ...

Things like tags, likes, pins, and similar ways of showing you like a brand or product are endorsements.

When to Disclose

Connection to a brand?

Disclose when you have any financial, employment, personal, or family relationship with a brand.

Remember:

- ◇ Financial relationships aren't limited to money. Disclose the relationship if you received anything of value to mention a product.
- ◇ If a brand gives you free or discounted products or other perks and then you mention one of its products, make a disclosure even if you weren't asked to mention that product.
- ◇ Don't assume your followers already know about your brand relationships.
- ◇ Make disclosures even if you think your evaluations are unbiased.

Posting from abroad?

Unfortunately, you are still going to have to comply with U.S. laws when posting from abroad. It doesn't matter if you're a U.S. citizen or not. The FTC laws will still apply to you.

If it's reasonably foreseeable that the post will affect U.S. consumers, a disclosure must be made.

Also, be aware that there might be other foreign laws that might also apply.

What if I just like a product?

If you don't have a brand relationship and are just telling people about a product you purchased that you happen to like, there is no need to declare and tell people that you **don't have** a brand relationship.

The FTC disclosure requirements are only required when you **do have** a brand relationship.

What else is an endorsement?

Endorsements come in many shapes and sizes. They can even exist in the most unlikely of places.

Things like tags in Instagram posts, likes of a Facebook post, pins on Pinterest and other similar ways of showing you like a certain brand or product are a form of an endorsement.

So, if you're getting paid to like or tag a product, then you must disclose that brand relationship. Similarly, if you have a brand relationship with a business and then tag or like their products, I think that should also be disclosed.

How to Disclose

Make sure people will see and understand the disclosure.

Best Practices

The disclosure should be placed with the endorsement message itself.

Disclosures are likely to be missed if they appear in any of the following ways.

- ◇ Don't post your disclosure only on an ABOUT ME or profile page;
- ◇ Don't post your disclosure at the end of posts or videos;
- ◇ Don't post your disclosure anywhere that requires a person to click MORE.
- ◇ Don't mix your disclosure into a group of hashtags or links.

Use simple and clear language

- ◇ An explanation like "A shout-out to InstaBrand for the free product" is usually enough if it's placed in a way that is hard to miss;
- ◇ Terms like "advertisement," "ad," and "sponsored," are great to use;
- ◇ On a space-limited platform like Twitter, using terms like "InstaBrand Partner" or "InstaBrand Ambassador" are also options;
- ◇ Feel free, but not obligated, to use hashtags like #advertisement, #ad, or #sponsored;
- ◇ Don't use vague or confusing terms like "sp," "spon," or "collab," or stand-alone terms

like "thanks" or "ambassador," and stay away from other abbreviations and shorthand when possible;

What language?

This is pretty self-explanatory. The disclosure should be in the same language as the endorsement.

Platform disclosure tools?

Don't assume that a particular platform's disclosure tool is good enough on its own. Consider using it in addition to your own, much better disclosure.

Specific Social Media Platforms:

Instagram / Snapchat

If your endorsement is on a picture platform like Instagram Stories or Snapchat, superimpose the disclosure over the image and make sure viewers have enough time to notice and read it.

YouTube / Facebook Videos

If making an endorsement in a video, the disclosure should be in the video and not just in the description uploaded with the video. Viewers are more likely to notice a disclosure made in BOTH audio and video. Remember, some viewers might watch without sound, and others might not notice superimposed words.

Live Streams

If making an endorsement in a live stream, the disclosure should be repeated periodically so viewers who only see part of the stream will get the disclosure.

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What else to know?

- ◇ You can't talk about your experience with a product you haven't tried.
- ◇ If you're paid to talk about a product and thought it was terrible, you can't say it's terrific.
- ◇ You can't make up claims about a product that would require proof the advertiser doesn't have – such as scientific proof that a product can treat a health condition.

The FTC will be performing a regulatory review of its Endorsement Guides in early 2020, which could trigger changes in its perspective as to what is or is not a sufficient disclosure depending on how consumer familiarity with platform partnership tools, changes in social media platforms, and new content methods. Check back for updates.

What is Legal Lessons?

Legal Lessons is about what the law really means and how it affects your business. It's written for entrepreneurs and business owners who need to understand exactly what is happening in their business from a legal perspective. And while it should never be seen as a substitute for legal advice, it provides the legal knowledge you need to run your company more effectively.



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We counsel and advise small and medium sized businesses and influencers to gain legal advantages and protection by providing original, success-focused strategies and legal know-how.

*This information is for educational and entertainment purposes only. You should consult your own attorney about your own particular legal issues. Every case is different. Also, I am not your lawyer. Thank you.

Source: FTC.gov/influencers; business.ftc.gov