



What's Hot: Advertising Disclosures on Social Media

April 7, 2016

Publication

Robins Kaplan LLP

With the rise of social media, especially photosharing platforms like Instagram and Facebook, the ways retailers are selling products and reaching consumers is drastically changing. While teenagers once looked to magazines and television to learn what fashion looks were new and trendy, they are increasingly turning to social media “influencers” to decide what is cool and worth their money. These fashion influencers are young, attractive users of the social media sites who have amassed vast numbers of followers. The influencers post photos—often many times a day—promoting what appears to be an extravagant and enviable lifestyle, all while showcasing their trendy (and often expensive, brand name) clothing, shoes, and accessories.

But, there's a catch: These influencers typically receive the expensive garments for free, a fact often undisclosed to their many young followers. Some even receive fees for posting photos of themselves wearing a particular piece or clothing or using a specific product; influencers' profits can vary significantly based on their number of followers, but some can earn up to \$100,000 for a single post.

There is a reason so many retailers are willing to shell out such large sums—industry estimates say brands are spending more than \$1 billion a year on sponsored Instagram posts—for a young influencer to post a phot of herself wearing their latest dress style: these influencers reach teenagers quickly and more effectively than more-traditional means of advertising. That is a serious incentive for retailers because for many of these brands, teenagers are their target audience.

So, why does it matter if an influencer fails to end her post with the #spon (a shortened version of sponsored) or #ad hashtags to indicate to followers when she has been paid for a post or received a product for free?

The Federal Trade Commission requires a certain level of transparency in advertising, allowing consumers to best make informed choices. This means advertisements cannot be deceptive, false, or misleading, and failing to disclose an Instagram post as sponsored or paid for by the brand can be considered deceptive or misleading advertising. The FTC's 2013 “.com Disclosures” provide retailers guidance on how to make sufficient disclosures in the age of social media.

To promote your products using Instagram influencers or other social media, remember:

1. A post or advertisement “shouldn't suggest or imply to consumers that it's anything other than an ad.”¹

2. Disclose any connection you have with the influencer, and make sure a disclosure is included with the eventual post.
3. The disclosure should be included “in close proximity” to the claim, such as a #spon or #ad hashtag at the beginning of a post.²
4. Oversee influencers and institute a compliance program to ensure they understand their responsibilities in disclosing their connection to your brand.

This article is #spon by Robins Kaplan

1. .com Disclosures: Home to Make Effective Disclosures in Digital Advertising, Federal Trade Commission (Mar. 2013), available at <https://www.ftc.gov/tips-advice/business-center/guidance/comdisclosures-how-make-effective-disclosures-digital>.

2. Native Advertising: A Guide for Businesses, Federal Trade Commission (Dec. 2015), available at <https://www.ftc.gov/tips-advice/business-center/guidance/native-advertising-guide-businesses>.

Related Attorneys

Anne M. Lockner