HOW NOT TO GET SUED

By the FTC When Working On Sponsored Content

☐

The FTC Checklist Every Social Media Influencer Needs

TapInfluence FOFU Guide: don’t be #KardashiaNotAUTHENTIC
What’s the sitch? And what the FTC?

Social-media / influencer marketing hiccups and outright violations are rising. As an influencer, ignorance or mis-direction from a brand aren’t excuses.

**True story:** even the Kardashians aren’t exempt in the eyes of the FTC when it comes to promoting brands and products using social media.

The Kardashian’s were paid to promote and endorse apps, consumer products and even prescription drugs on social media. The problem? Well, they didn’t disclose the social media posts were a paid promotion. #ad

---

**Federal Trade Commission (FTC)** is an independent agency of the United States government, established in 1914 by the Federal Trade Commission Act. Its principal mission is the promotion of consumer protection and the elimination and prevention of anticompetitive business practices, such as coercive monopoly.

Working with brands on sponsored opportunities isn’t impossible, you simply need to follow the rules. Lacking transparency exposes questions about your authenticity and the brand’s integrity. We’ve got your back, the TapInfluence FOFU guide is here to help.
Don’t mess with the FTC, they’re like the IRS for marketing.

Recent fumbles by Lord & Taylor, Warner Bros, and the (err) Kardashians have brought industry awareness to legal requirements surrounding influencer marketing. It’s now—more than ever—our job as influencers to understand our legal responsibility.

All sponsored content is governed by the Federal Trade Commission’s guidelines for native advertising, which require that all paid social endorsements—regardless of platform—must be labeled so they’re "honest and not misleading."

New marketing channels aren’t exempt. Despite this, TapInfluence-sponsored research by Altimeter revealed that 48% of marketers “sometimes” or “never” require influencers to mark their sponsored posts with FTC-compliant disclaimers.

This creates enormous legal exposure, but perhaps even more important—it hurts the integrity of the industry and the influence economy as a whole. Legal considerations aside, transparency is the key to maintaining trust between brands, consumers and influencers.

48%

Of marketers hardly require influencers to mark sponsored posts with FTC disclaimers

Altimeter Report July 2016
Brands: be up front with your goals from the start. Let us help you create the strategy. It’s not just a one-time thing. That’s what people don’t understand about working with an influencer.

Sandra McCollum

If 50 bloggers have the same branded paragraph in their posts, that’s not authentic. Part of being an influencer is having an authentic voice.

Censie Sawyer

We’re just trying to be genuine here. So—be genuine. Don’t be so aggressive. Influencers help tell the story that your brand may not be able to tell.

Lane Radbill, CW Hemp

Influencer marketing means being able to let go. To trust the people you’ve hired to translate your message.

Julianna Vorhaus

Helpful resources:

State of Influence: Unplugged
How to Be Compliant, i.e. Don’t Conceal Advertising. That’s Lying.

Remember: the goal with influencer marketing is always be to improve the experience for consumers and to establish an authentic connection. **Never attempt to conceal the promotional nature of your messages when working with brands.**

If you find yourself being asked to or thinking about concealing, don’t do it. Your audience is more savvy than you think, and they deserve to know when they are being marketed to.

**Helpful resources:**

- New Year, New FTC Regulations for Native Advertisements
- FTC Native Advertising Guide
- The Future of FTC Regulations Following the Warner Brothers Crackdown
- FTC Rules of Engagement for Native Advertising
- A How-To Guide for Properly Disclosing Your Sponsored Posts

Here’s what the FTC considers deceptive advertising:

- Advertisements that appear in “news format” or otherwise misrepresent their source or nature (e.g., an advertisement formatted to appear as a regular search result without disclosing the paid nature of the advertisement).
- Advertisements with misleading “open doors” (e.g., an email that misleads the recipient as to the source or content of the email).
- Deceptive endorsements that do not disclose a sponsoring advertiser (e.g., reviews in an app store that are posted by employees of a public relations firm hired by the app developer).

Always be sure to clearly disclose sponsorships of any kind, so that readers will understand the motive behind the messages.

**Example of proper disclosure:**
In his “Rules of the Road for Social Media: Influencer Campaigns and Native Advertising,” Tom Dahdouh, the FTC’s Western Region Director, explained that context matters.

He recently wrote, “Is the relationship or connection between the endorser and the marketer apparent from the context of the endorsement message? If so, then no disclosure is necessary. If not, then the connection should be clearly and conspicuously disclosed in the endorsement message.”

Dahdouh also explained that advertising and promotional messages that are not identifiable as advertising to consumers “are deceptive if they mislead consumers into believing they are independent, impartial, or not from the sponsoring advertiser itself.”

Here are a few points he makes with regards to influencer marketing strategies and remaining compliant with the FTC:

- Effective social media marketing – like ANY marketing – depends on trust.
- Material connections such as financial or family relationships should be disclosed when they’re not otherwise obvious to the reader.
- Disclosures should be made where the reader will notice them and in language the reader will understand.

The bottom line: brand motivations and consumers’ needs don’t have to be at odds with one another. Influencer marketing is an opportunity for brands to promote their products and add value for customers beyond what they could have accomplished using traditional ads or robotic banner ads. Take this opportunity and commit to doing it right, every time.
There is a really long FTC list. This is our summarized version. No Joke.

FTC guidelines apply to online advertising, marketing, and sales. Rules aren't exclusive to any particular medium used to disseminate claims or advertising, basically it applies to the entire spectrum of online activities. Direct from the FTC:

- Incorporate relevant limitations and qualifying information into the underlying claim, rather than having a separate disclosure qualifying the claim.
- Required disclosures must be clear and conspicuous.
- Consider its placement in the ad and its proximity to the relevant claim. The closer the disclosure is to the claim to which it relates, the better.
- Don’t try to hide or distract consumers away from the disclosure.
- Disclosure language must be understandable to the intended audience.

Here’s the really long FTC checklist:

Native Advertising: A Guide For Business.com Disclosures: How to Make Effective Disclosures in Digital Advertising

To make a disclosure clear and conspicuous, influencers should:

- Place the disclosure as close as possible to the claim.
- Prominently display disclosures so they are noticeable to consumers, and evaluate the size, color, and graphic treatment of the disclosure in relation to other parts of the webpage.
- Take account of the various devices and platforms consumers may use to view advertising and any corresponding disclosure.
- Make sure disclosures are visible cross device and platform.
- When a space-constrained ad requires a disclosure, incorporate the disclosure into the ad. If that isn’t possible, sometimes it’s acceptable to make the disclosure clear and conspicuous on the page to which the ad links.
- Review the entire ad to assess whether the disclosure is effective in light of other elements — text, graphics, hyperlinks, or sound — that might distract consumers’ attention from the disclosure.
- Use plain language and syntax so that consumers understand the disclosures.
There is a really long FTC list. This is Part II. Told you it’s long. Serious Stuff.

When using a hyperlink for disclosures:

- Make the link obvious - label the hyperlink appropriately, hyperlink styles must be consistent and clear so consumers know when a link is available
- If hyperlinking, take consumers directly to the disclosure on the click-through

For really long pages:

- Design advertisements so that “scrolling” isn’t necessary in order to find a disclosure
- If scrolling is necessary, use text or visual cues to encourage consumers to scroll to view the disclosure
- Repeat disclosures on lengthy websites
- Disclosures should be repeated if consumers have multiple routes through a website

- Keep up-to-date on the latest user experience research, e.g.: where consumers do and don’t look on a screen
- Recognize and respond to any technological limitations or unique characteristics of a communication method when making disclosures

Upon making a purchase:

- Display disclosures before consumers make a decision to buy — e.g., before they “add to shopping cart
- Disclosures should be presented before the actual purchase
- If a product or service promoted online is intended to be (or can be) purchased from “brick and mortar” stores or from online retailers other than the advertiser itself, then any disclosure necessary to prevent deception or unfair injury should be presented in the ad itself — that is, before consumers head to a store or some other online retailer
- Necessary disclosures should not be relegated to “terms of use” and similar contractual agreements
So, that is a lot of legal jargon. What does this mean for me

Sponsored Content on Social Channels:

- Lack of space isn’t an excuse, at a minimum your post needs to include #ad #sponsored is also acceptable disclosures.
- #sp #spon #partnership or #collaboration are NOT considered to be clear and conspicuous by the FTC
- Don’t try to bury the disclosure hashtag among others on your post
- Posting just a photo, even without a caption still requires disclosure if it is sponsored

Sponsored Blog Content:

- The guidelines call for clear and conspicuous disclosures, and in most cases, that means at the beginning of a post (blog or social)
- If you are doing multiple posts for a brand, you need to include disclosures on every post
- If you are sharing posts to multiple platforms, double check the disclosure appears correctly in all places

Sponsored Videos:

- Verbal disclosure on a video is not enough - too many people watch videos with the sound turned off - be sure you include a disclosure in the text as well

At the end of the day . . .

- If you are trying to sneak in a disclosure or trick your readers, you are just doing it wrong
- Anyone can file a complaint with the FTC - a watchdog group, disgruntled readers, anyone.
- You need to be as educated as you can - the FTC does not consider lack of education by the brand you are working with an excuse.
- If you are an ambassador, a spokesmen or an investor in a company, that should be disclosed on posts about that company. Your relationship to the band in questions must be clear.
- Payment is not just about cash - if you are receiving product, gifts, discounts or other perks, these must be disclosed
About TapInfluence.

TapInfluence connects premium content creators and social influencers with top brands via TapExchange, the TapInfluence Marketplace.

TapInfluence works with more brands and agencies than anyone else in the industry and thus offers influencers in our marketplace the most opportunities on a regular basis.

TapExchange is opt-in and vetted giving our customers access to the best influencers in the industry - with robust media kits, and the ability to set your own rate.

We don't want to own the relationships with the marketer - we want our influencers to. Marketers and influencers work best when they can do just that. Tap is here to help make the connection and facilitate the relationships - but we let our users take it from there.

Influencers should spend their time doing what they do best - creating content and engaging with their audiences. Tap’s technology allows them to do just that by automating everything that can and should be automated.

Visit TapInfluence.com/influencers for more information or click below to get a apply to join.


This eBook and FTC rules guide is meant to be helpful when participating in social media and influencer marketing campaigns with brands but does not preclude working closely with your legal counsel. In fact, ours reminded us to tell you that this is a useful tool but not definitive permission and does not replace your legal counsel in any way.