#ad Disclosures

FTC Best Practices for **Brands and Social Media Influencers**

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**Roadmap**

- What Is Influencer Marketing?
- Hypotheticals & Discussion
- Q&A Session

**The Problem**

**Paradigm shift in advertising**

Advertising is experiencing a paradigm shift wherein the incentives to use traditional ad platforms have diminished.

**Paradigm shift in media**

Media is experiencing a paradigm shift wherein structured oversight from editors and ethical standards have diminished.
What is an ad?

Then: The right-side pages of a magazine, TV commercials, direct mail, and other paid messages in familiar places

Now: Messages about commercial products in unexpected places

@SELENAGOMEZ, INSTAGRAM, JUNE 2016

What is an influencer?

Then: The model in fashion campaign, the athlete in a TV commercial, the celebrity on the red carpet

Now: Situational

Who

SEEMS OBJECTIVE
JOURNALIST
HOST
REVIEWER
BLOGGER
CELEBRITY

SEEMS PAID

SEEMS CANDID
SOCIAL MEDIA
BLOG
PODCAST
MAGAZINE
NEWSPAPER

SEEMS EDITED

SELENA GOMEZ, SNAPCHAT
Influencer Marketing's Impact

http://www.thefashionlaw.com/home/instagrams-most-liked-photo-of-all-time-is-likely-illegal

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UPATED: Instagram's Most *Liked* Photo Is Likely Illegal
September 22, 2016 / 171

"the 23-year-old is one of the faces of the brand's "Share a Coke and a Song" campaign and charges roughly $550,000 per social media post."

"It turns out, Gomez's post was, in fact, the result of compensation, as the singer has since edited the post to include #ad."

Media Terms

Advertorial
a newspaper or magazine advertisement giving information about a product in the style of an editorial or objective journalistic article (Dictionary.com)

Affiliate Marketing
a marketing arrangement by which an online retailer pays a commission to an external website for traffic or sales generated from its referrals (Dictionary.com)

Influencer Marketing
when advertisers, seeking to woo a specific audience, sponsor "influencers" to create and post unique content across social media channels (VSA Partners)

Native Advertising
paid media where the ad experience follows the natural form and function of the user experience in which it is placed (Sharethrough)

Micro-, Macro-, Mega-Influencers
Micro-influencers are powerful, "middle" social media users with smaller followings, who garner superior, organic engagement because they appear more authentic and trustworthy than the mega-celebrity or other widely-recognized macro-influencers.

Ad or edit?
"In print, [the delineation] usually is achieved with a label on the header or footer of the page saying it's advertisement. And, in addition to that, there's usually a writing staff focusing solely on native advertising that the editorial side would never touch. Because ethics . . . .

[Online] the delineation between ads and genuine editorial becomes murky."
Who is responsible?

Influencers
Some didn’t go to journalism school and study ethics, don’t have editorial oversight, or haven’t been counseled on the law

Brands
Some may attempt to reframe the relationship as something other than paid promotion, or give discreet disclosure that won’t “water down the impact”

Media Companies
Some may look like online journalism, act more like advertising agencies, but are paid content farms

“The problem arises when readers or social followers can’t tell the difference between independent opinions and paid advertising, and that’s what the FTC hopes to end.”

ENGADGET, 3/31/17
Clearly disclose a material relationship with a brand

“Consumers need to know when social media influencers are being paid or have any other material connection to the brands endorsed in their posts”

FTC ACTING CHAIRMAN MAUREEN OHLHAUSEN

Hypotheticals
#LetsPlay Influencer Buyout

**Who is your client?**

A marketing consultant that is hired as an independent contractor to promote a new video game by a gaming company with a small budget. The gaming company wants the consultant to create a “grassroots” campaign that “feels authentic.” The consultant has full creative control.

**What happens?**

The consultant approached several well-known #LetsPlay YouTube and Twitter personalities and provides up-front cash payments and advance copies of the game. Reviewers are told to review the games positively and not to mention any bugs found in the game or the fact that they were paid for the reviews.

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**Best Practices**

**ISSUES FOR YOUR CLIENT THE MARKETING CONSULTANT**

- Written Contract w/ Influencers
- Adequate Disclosures on Different Platforms (e.g. YouTube)
- Written Contract w/ Video Game
- Monitor Posts for Disclosures
Fashion Blogger Line Launch

- **Who is your client?**
  An apparel brand collaborates on a co-branded jacket line with a fashion maven who has over 400k followers on Instagram and her fashion blog, supported by affiliate links and pay-per-click advertising.

- **What happens?**
  The apparel brand pays for a photoshoot at popular outdoor murals in Miami, FL. The collaboration contract includes the blogger’s services in creating a certain number of posts for her Instagram and Pinterest profiles, without disclosures required, while the brand maintains approvals. The blogger must filter any negative social interactions across platforms.

  A month after the collaboration ends, the blogger learns about the FTC’s disclosure guidelines and adds #colab to the end of her Instagram posts, adding several lines of "." before the tag.

Best Practices

**ISSUES FOR YOUR CLIENT THE APPAREL BRAND**

- Nature of the relationship
- Platform limitations
- Filtering comments
- Late disclosure
- Copyright – transformative work
The Model’s Snaps

Who is your client?
An energy drink brand has offered to buy inside-front-cover ad space in three issues if a new pop culture magazine that is featuring a model in its next issue.

What happens?
The magazine wants to feature a model in its next issue, paying a modest editorial fee and covering luxury travel accommodations for the shoot. The magazine’s offer has two parts: 1) a cover and feature photo shoot; 2) behind-the-scenes shoot. The model will post behind-the-scenes Snaps on her Snapchat profile, and the magazine will print them in the front of the magazine next to the Editor’s Note.

The publisher thinks the brand might sign on for more ad space if the drink is featured in the editorial pages. The photos highlight the model with the energy drink. The energy drink brand is unaware of the photos until the model posts the Snaps.

Best Practices

ISSUES FOR YOUR CLIENT THE ENERGY DRINK BRAND

- “Advertorials”
- Native advertising
- Disclosure: Who is responsible?
- Disclosure: What is sufficient?
The Celebrity Baby Meme Challenge

- Who is your client?

A former child star Celebrity recently had two children. As an investment and to keep up her profile with fans who are also having babies, she bought an interest in a new company selling a line of organic baby food.

- What happens?

The product line is launching, and the Celebrity decides to generate interest in the baby food line by holding a meme contest through her Instagram profile. She posts the rules of the contest on her profile: contestants will create a meme about raising babies; post it to their profile, tagging the celebrity, the baby food company, and three friends.

The Celebrity will then re-share the top ten entries and ask her followers to vote on their favorite meme by liking their favorite meme and following the baby food company. Voters will get a discount code for baby food. The meme contest winner will get a six-month supply of baby food and a playdate with the Celebrity and her kids.

Best Practices

ISSUES FOR YOUR CLIENT THE CELEBRITY

- Disclose interest in baby food company
- Re-sharing contest entries
- Contest entry disclosure
- Conspicuous disclosure
Sharpen This: A Pencil Podcast

- **Who is your client?**

  A pencil company supplies the host of a podcast about pencils with 100 pre-release boxes of a new pencil product.

- **What happens?**

  More than anything the host wants to grow his followers on Facebook, hoping for more listeners and subscribers to his podcast. He decides to give the pencils away on his show.

  During the next episode, he announces that the first 100 new followers on Facebook will get a free box of pencils. He also gives out a discount code for 30% off and free shipping at the pencil company’s website that is good for anyone who listens to the episode.

  The pencil company will pay the host a cut of any sales from use of the discount code. The blogger doesn’t mention anything about his cut.

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Best Practices

**ISSUES FOR YOUR CLIENT THE PENCIL COMPANY**

- Native advertising
- Affiliate marketing
- Contests
- Platforms – Facebook & podcast
- Industry standards not established as disclosure adoption is evolving
The Cryptocurrency-Backed Blog

- **Who is your client?**
  An industry insider founded a blog that turned into a hit online news source. A *media outlet* purchased the blog and kept the Founder on as its editor-in-chief.

- **What happens?**
  An industry friend contacted the Founder about a new crypto-currency offering. The friend asked the Founder to write an article about the offering. In exchange, the Founder will receive, in the new currency, a cut of sales generated in the five days following his blog post. The media outlet employs the Founder.

Best Practices

**ISSUES FOR YOUR CLIENT THE MEDIA OUTLET**

- **When in Doubt, Disclose**
- **Know Your Regulatory Space**
Questions?