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FTC Issues Guidance For Social Media Influencers; Will It Help?

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On Nov. 6, the Federal Trade Commission (FTC) issued a publication entitled [Disclosures 101 for Social Media Influencers](#).

This latest guidance document from the FTC follows others it has published in the wake of the 2009 revisions to the [Endorsement Guides](#), including the [.com Disclosures Guide](#) published in March 2013 and the [Q&A](#) published in September 2017, and is likely intended to follow up on the 90 [warning letters](#) the FTC sent to brands and influencers in 2017.

What sets this guidance apart is that it is the first publication targeted directly at *influencers* (versus the brands and agencies that engage with them), and the industry will certainly be watching to see whether this attempt to bring clarity to the need for transparency and truthfulness in influencer marketing will move the needle toward more consistent and compliant behavior.

While much of what's contained in Disclosures 101 is essentially a restatement of existing principles written in a voice intended to resonate with influencers – so in many ways this guidance isn't really anything “new” – there are a few key elements to note:

- A short, clear, and to-the-point reminder to influencers that properly disclosing material connections and telling the truth are not only the law, but are also the *influencer's responsibility*.
- Direction to “[d]isclose when you have any **financial, employment, personal, or family relationship** with a brand.” This particular

mandate could cause increased confusion due to its scope, particularly the call out of a “personal” relationship; we will have to wait and see if influencers understand what that means.

- A reminder that *tags* and *likes* are endorsements. This is a very broad statement that may leave influencers perplexed about what their duties are if and when they “like” a brand post, including how they can or should make a disclosure. This uncertainty may cause influencers to try to push responsibility on brands and agencies to provide clear instructions (including specific hashtags to use) in their influencer contracts.
- The FTC notes its approval to use terms such as “[Brand Name] Partner” or “[Brand Name] Ambassador” in space-constrained environments to disclose a material connection; the FTC had previously refused to acknowledge that such a term (including as a hashtag) was adequate.

The FTC has advised that it intends to revisit the Endorsement Guides in 2020. It is likely that the responses to this Disclosures 101 document will play a role in helping shape any changes that may be implemented, as well as to any additional guidance the FTC issues.

In addition, the FTC has shown increasing interest in the area of fake or incentivized product reviews beginning with the [Cure Encapsulations](#) case, as well as in the area of fraudulent indicators of influence as demonstrated by the recent case brought against [Devumi, LLC](#). We will see if the FTC fleshes out its guidance in those areas in any new publications or revisions to the Endorsement Guides, since that subject is not specifically addressed in Disclosures 101.

Anyone who oversees social media policies, engages in social media marketing or contracts with influencers should stay abreast of best practices for interpreting and applying the Endorsement Guides. Until additional closure on some of these gray areas and open questions is provided, brands and influencers would be well-suited to err on the side of transparency.

For more information, please contact the Barnes & Thornburg attorney with whom you work, or Jim Dudukovich at 404-264-4054 or jim.dudukovich@btlaw.com, or any member of the Advertising and Marketing Practice Group.

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