

**Influencer Marketing: A Deep Look into Legal Components to Generate Success**

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**Introduction:**

With a consistent rise in social media use and platforms, influencers have become an even more excellent tactic in promoting products, brands, services, and companies. This digital marketing strategy has proven an excellent opportunity to produce high engagement rates from target audiences when companies collaborate with individuals to promote their products. However, with great opportunity comes great responsibility. Influencer marketing has various legal practices and guidelines to ensure consumers are given proper disclosure and accurate information. This practice area report will dive deep into the specific legal practices and guidelines that allow influencers to work with companies appropriately and engage their target audiences without feeding users misinformation.

**Description:**

To take a deeper look into the importance of legal considerations and guidelines in influencer marketing, some terms must be defined to understand the practice in depth fully. Influencer marketing refers to the collaboration between brands and influencers, individuals with large social media followings, to promote a product or service. Influencer marketing has proven successful due to influencers' direct connection and influence with their audiences, authenticity, effective measurability, and the variety of content that can be produced (*What Is Influencer Marketing?*, 2023). The rapid growth of social media influencers and influencer marketing required a complex landscape of legal considerations and guidelines to generate proper success.

Disclosure and transparency are vital components in the legalities of influencer marketing. When influencers post content they receive compensation for, they must clearly disclose the relationship with the brand to be transparent and not mislead audiences. Disclosure requirements can vary from country to country. In the United States, the Federal Trade Commission (FTC) requires that influencers provide several disclosures as a part of their profiles, posts, or websites. Detailed requirements can be found in their guidebook, updated regularly as the influencer landscape changes. General rules for disclosure from the FTC include placing the disclosure so it is hard for users to miss, using straightforward language, one cannot talk about an experience with a product they have not tried, being paid to discuss a product they did not like, they cannot say they liked it, and one cannot make up claims regarding the product (*FTC Releases Advertising Disclosures Guidance for Online Influencers*, 2019). Failure of influencers to clearly disclose relationships can result in serious legal trouble.

Influencers are also held liable by intellectual property rights and copyright laws. Intellectual property is a creative work or invention legally protected by copyright. Copyright grants the owner the right to copy, distribute, adapt, display, and perform their creative work while preventing others from doing so. Intellectual property and copyright play a role in influencer marketing for two main reasons. One is ensuring influencers use original work, not another person's intellectual property. The second is determining who has ownership rights of the content, the brand, or the influencer (Advocates, 2023). Ownership is detailed and negotiated within the contract.

Contracts are vital in influencer and brand relationships to discuss deliverable expectations, the scope of work, compensation, ownership, the longevity of the relationship, and measures to be taken if there is a breach of contract. Influencers are held to a standard when working with a brand that they will make factual claims about a product or person. Failure to do so results in the influencer being subject to libel, slander, or defamation suits. Defamation is a particular area of law that protects individual reputation and livelihood if one's word causes harm (*The Legal Side of Influencer Marketing: A Comprehensive Guide to the Influencer Business*, 2023). Libel is a written or published defamatory statement, while slander is defamation that is spoken.

### **Best Practices:**

An example of a successful influencer partnership that followed all legal guidelines is a famous influencer, Alix Earle's, recent collaboration with L'Oreal Paris on TikTok. Alix Earle posted content that clearly showed disclosure on the video itself, along with sharing in the caption that she is a L'Oreal partner (Earle, 2024). Along with appropriate disclosure, the content is generated by Alix herself and clearly shows her using the product, proving she is being transparent and honest.

An example of a brand that partnered with an influencer who related to their product and successfully created content that followed all legal guidelines is Neutrogena's collaboration with Dr. Daniel Sugai, MD, FAAD, a dermatologist with a large following on Instagram and TikTok. The content created by Dr. Sugai clearly states he is a Neutrogena partner at the beginning of the video, and he states it first in his captions (Sugai, 2024). The sponsored video talks about the product in detail and shows the science behind it, ultimately proving to his audience that he uses the product and promotes it authentically. Brands that team up with more niche influencers have great success when following all legal guidelines and considerations to reach their target audience.

### **Context:**

The legal landscape within influencer marketing must be considered at every step of creating an influencer marketing campaign. Legal considerations ensure consumer trust is maintained and protect the interests of all parties involved; failure to pay attention to the legalities every step of the way could result in various consequences, including legal action, reputation damage, and financial penalties. Taking into account all legal considerations and following the FTC guidebook, "Disclosures 101 for Social Media Influencers" ensures ethical standards are being met and provides the influencer with a safe and proper campaign success (Federal, 2018). Before creating the campaign and contacting influencers, a brand must be familiar with the FTC guidelines, disclosure policies, and other legal practices. The legal considerations do not stop once the content is uploaded and posted. There are specific legal teams tasked with monitoring and enforcing all content, ensuring it is in accordance with FTC guidelines, advertising regulations, and other applicable laws through the utilization of manual content review, keyword monitoring, image recognition technology, social media monitoring, and contractual obligation monitoring (Russel, 2023). Although influencer marketing content

may not fall under traditional advertising mediums, proper advertisement regulations must be met. These processes and tools ensure the campaign will not find any trouble along the way.

### **Issues and Trends:**

Influencer marketing will continue to become more popular as brands begin to utilize their platforms. There has been an increase in influencer marketing trends requiring added legal considerations. The first is the increasing trend of using artificial intelligence (AI) as stated in Forbes' article "Influencer Trends to Watch in 2024" (Wiley, 2023). With AI still being relatively new and a bit of uncharted territory, it is hard to say how AI will be incorporated into influencer marketing, but it is safe to say it will. While various issues could arise with the use of AI in influencer marketing, like a growth of distrust and lack of authenticity, legal concerns also accompany it. Those specific legal concerns have to do with copyright and ownership. If an influencer were to utilize AI without the brand knowing, there could be potential legal trouble.

Another rising trend within influencer marketing that requires significant legal considerations found in the article, "16 Influencer marketing Trends that will Shape 2024" is the rise of brands shifting to long-term collaborations with influencers rather than one or two posts (Santora, 2023). This trend is occurring due to the relationship influencers create with their audience and the trust that can grow if an influencer has a long-term commitment to the brand. However, this is a trend that requires in-depth details in contracts. There is room for error in long-term collaborations when dealing with disclosure and expectations. Contracts must go in depth about the duration of the collaboration and ownership of content.

The main issue with influencer marketing that led to specific guidelines and requirements being made is the general lack of transparency that can occur with posted content. Influencers were not always required to disclose their relationship with a brand, which led audiences to feel misled. Some influencers choose not to disclose their relationship because it can lead to their audiences believing they are not 'authentic.' This lack of transparency and disclosure led to the FTC stepping in in 2019 and issuing guidelines that require influencers to be transparent. Since then, the FTC has continued to update these guidelines and requirements due to the changing landscape of influencer marketing and social media.

### **Thought Leaders:**

A notable thought leader in legal considerations for influencer marketing is Katherine Armstrong, an attorney specializing in advertising and marketing law. Katherine Armstrong earned her J.D. at Lewis & Clark Law School, where she went on to become a privacy and identity protection attorney at the FTC for the past 34 years and aided in FTC guidelines, disclosure requirements, and contractual agreements. Katherine Armstrong wrote an article in 2021 titled "The 2000s Introduced the Internet and Influencers to Ad Law," where she discussed the importance of legal considerations in influencer marketing.

Brian Heidelberger is the Chair, Advertising, Marketing, and Promotions attorney at Loeb & Loeb LLP in the Chicago Area. After earning his J.D. and Chicago-Kent College of Law, he went on to represent an array of the nation's most revered brands and agencies in all business

areas. Recognized as the Chicago "Lawyer of the Year" in Advertising Law by *Best Lawyers*, Brian Heidelberger is well versed in all areas of advertising law, including intellectual property rights and contractual negotiations in influencer marketing.

### **Professional Associations:**

A professional association that aids in educating and guiding marketing professionals is the Association of National Advertisers (ANA). Founded in 1910, the ANA is the United States' oldest and largest trade association in the advertising industry. With some of the most influential marketers and advertising veterans leading, the ANA aims to promote cooperative relationships between regional and national agencies. With countless resources, the ANA provides research, reports, and events surrounding influencer marketing and legal considerations. The ANA headquarters can be contacted at (212)-296-1430 and emailed for general inquiries at [info@ana.net](mailto:info@ana.net). For more information regarding the resources and association, visit [www.ana.net](http://www.ana.net).

The Influencer Marketing Association (IMA) was established to help create resources and guidance for the constantly changing practice of influencer marketing. With industry experts, the trade organization works to protect the authenticity and ethics of influencer marketing. The IMA values ethics and transparency as strategic pillars, ensuring ethical and legal standards are adopted and clarified across all influencer marketing practices following FTC guidelines. The IMA's executive director can be contacted via her LinkedIn at [linkedin.com/in/jessicathorpe](https://www.linkedin.com/in/jessicathorpe), and to connect with the IMA, one can visit <https://www.influencermarketingassociation.org/contact>. For more information regarding the resources the IMA offers, visit <https://www.influencermarketingassociation.org>.

### **Major Annual Events:**

The ANA annually hosts the most extensive advertising, marketing, and promotion law conference in the nation, the Masters of Advertising Law Conference. The conference works to bring together industry leaders and marketing law practitioners to discuss legal topics impacting the advertising and marketing industry. The conference holds talks regarding legal issues related to influencer marketing, where FTC Endorsement Guides updates were discussed along with how to prepare for deal terms. In addition to various discussions regarding the industry, the conference also gives individuals the chance to earn continuing legal education credits (CLE). The conference is mainly held towards the end of the year, with the 2024 conference taking place November 11 – November 13 in Scottsdale, AZ.

The Influencer Marketing Show takes place annually to allow individuals to learn from leaders in the influencer marketing community. While this show does not discuss legal considerations, some brands and agencies are well-versed in the industry and share their knowledge to utilize influencer marketing strategies accurately and appropriately. The Influencer Marketing Show provides education on how to produce results authentically and transparently. The Influencer Marketing Show USA will occur in New York from June 3-4, 2024.

## Resources:

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