

PILOTWORKS

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FOOD MENTORS: WHAT FOOD BRANDS NEED TO KNOW ABOUT INFLUENCER MARKETING

by Rohini C. Gokhale

Many chefs, restaurants, and food entrepreneurs turn to influencers and endorsements when they think about how to build their brands—such partnerships can be valuable tools for growing a business. But as an entrepreneur marketing in the digital world, endorsements can be a nightmare if you ignore the legalese. The Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising (FTC Guides) explain the nitty-gritty of influencers’ endorsements.

If your brand engages endorsers like paid spokespeople, bloggers, or influencers to promote your services or products, pay attention to the regulations. We’ve broken them down below.

1. DISCLOSE, DISCLOSE, DISCLOSE

Alongside its catch-all truth-in-advertising principles, the FTC Guides state that “when there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be fully disclosed.”

In short, the FTC Guides require marketers to disclose material connections to a brand in all communications—whether in a newsletter, Instagram post, or on the air. If you pay an influencer, provide them with free goodies, or comp them tickets to parties, and more, they’re required to let their followers know.

2. KEEP IT CLEAR, CONSPICUOUS, AND CLOSE

Don’t make it hard to find the disclosure—the FTC requires the statement be obvious. But the disclosure also must be close to the endorsement, like at the top of a blog post, in the beginning of a video, or via a hashtag (#paid #sponsored #ad) on Twitter. Put the disclosure before the endorsement, that way readers know right off the bat.

3. BE VIGILANT

The FTC spends a lot of time and energy discouraging (and suing) misleading endorsements in advertising. In just one of a string of actions, the FTC settled with a dietary supplement marketer over allegations that the marketer deceived consumers by creating direct mail brochures styled as scientific journals with fictitious endorsements and testimonials from physicians and consumers. The penalty was hefty—in the millions.

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In 2017, the FTC sent more than 90 letters to celebrities and other influencers highlighting the need for influencers to “clearly and conspicuously” disclose their relationships to brands when they promote or endorse them on social media. The FTC specifically referenced Instagram feeds on mobile devices clarifying that any material connections to a brand be disclosed above the ‘more’ button below a post, and that hashtags like #sp and #partner were not sufficiently clear. Basically, don’t leave any room for questions.

4. STICK TO APPROVED USES

Make sure the influencers you’re working with only promote approved uses of your products. You can be held responsible for any necessary risk information that isn’t disclosed in promotional materials.

And, if you “like” or retweet user content, you can be deemed responsible for promoting its message.

5. CONSULT WITH THE EXPERTS

To avoid problems down the line, if you or your business doesn’t have an influencer policy in place, work with legal counsel to develop and enforce an influencer policy and internal guidelines. Make sure your influencers are trained on best practices and monitor their activity. This policy should provide examples of FTC-compliant disclosures and include instructions regarding intellectual property clearance, how influencers must provide their honest and truthful opinions, and how influencers should only make factual statements if they are truthful and can be verified.

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ABOUT THE AUTHOR



Rohini C. Gokhale is an associate the Advertising, Marketing & Promotions Practice Group of Davis & Gilbert. She may be reached at 212.468.4978 or rgokhale@dglaw.com.

