CLIENT ALERTS & INSIGHTS

#ClassAction: Influencer Marketing Class Actions are Trending

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Class actions alleging deceptive influencer marketing practices are going viral. These new lawsuits, naming both companies and affiliated influencers as defendants, mark the advent of a new era of enforcement in the influencer marketing industry. With influencer endorsements as a key marketing strategy, companies should make sure their influencers are properly disclosing any sponsorship to avoid liability.

The New Lawsuits

In the last few months (with an uptick in recent weeks), at least six companies-including major clothing retailers, a men's jewelry and watch brand, a dietary supplements manufacturer, and an energy drink producer-have been hit with nationwide class action lawsuits for their partnerships with influencers who allegedly failed to disclose that their social media posts were sponsored.

The crux of these lawsuits is that retailers and influencers tricked customers into paying a premium by falsely suggesting that the influencers were endorsing the products organically, without any incentive to do so. These lawsuits are largely based on the Federal Trade Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" ("Endorsement Guides"), discussed further below, which require influencers to disclose their "material connections" to the brands they are endorsing, including any compensation. Plaintiffs claim that by failing to comply with the Endorsement Guides, retailers violate state consumer protection laws and the FTC Act. Most of the lawsuits have been filed in California and Illinois federal courts, and brought under some combination of California, Florida, and Illinois law. The plaintiffs purport to bring claims on behalf of all customers nationwide.

Notably, in some of the cases, the influencer *did* disclose that they were posting sponsored content, such as by using #AD in the caption for the sponsored post. However, the plaintiffs claim that because #AD was buried in a long caption, nestled in between a slew of other tags, or tacked on to the end of a different tag (*i.e.,* #ClothingAd), it was not clear or conspicuous enough to prevent consumer deception.

For example, in *Negreanu v. Revolve Group, Inc.*, filed on April 14, 2025 in the Central District of California, the plaintiff claims that the retailer defendant, Revolve, worked together with certain influencers to "artificially inflate the prices for Revolve products." The complaint alleges that because the influencers in question use disclosures when promoting other brands, but not Revolve, that Revolve must have instructed them to "disguise the advertising" in violation of the Endorsement Guides. They also contend that because Revolve charges 10-40% more than competitors for the same items, and that those other retailers comply with the Endorsement Guides, that Revolve's

alleged failure to comply is what allows them to charge higher prices. They seek to recover this alleged "premium" on a class-wide basis, which they claim adds up to more than $50 million. She brings claims under California and Florida law, "various consumer protection laws of various states," and for unjust enrichment and negligent misrepresentation.

Plaintiffs in all of these lawsuits will need to overcome significant hurdles. For example, the proposed class definition encompasses all customers-regardless of whether the customers ever even saw a social media post, misunderstood the sponsored nature of a given post, or made a purchase in result. The influencers, posts, and disclosures are also widely varied. And even the Endorsement Guides recognize that a disclosure is not required where consumers would understand, in context, that a post was sponsored. Today's social media customers are sophisticated and understand that most posts *are* sponsored, and certainly would not make purchases out of reliance on a lack of disclosure. For clothing items, Plaintiffs do not dispute that, for example, the photographs in the challenged posts accurately depict the defendants' clothing. To the extent a customer bought something because it looked good in a post-and not because they believed the post was organic (not-sponsored)-she would not have a claim.

Overview of the FTC Endorsement Guides

The FTC's Endorsement Guides are the centerpiece of these new complaints-even though they are not legally binding and do not provide a private right of action.

The Endorsement Guides require influencers' social media posts and other sponsored content to reflect their "honest opinions, findings, beliefs, or experience" of the product, and "to disclose unexpected material connections between themselves and their endorsers." Material connections can include any material incentive to endorse a brand, including employment relationships, free or discounted products, early access to a product, or the possibility of being paid (like a commission if customers use a code or click on a specific link). A connection must be disclosed any time "a significant minority" of the audience would not understand or expect the connection.

Influencers are not required to disclose every detail of their connection with the brand, but they must clearly communicate the nature of the connection so consumers can evaluate the significance. For example, an influencer does not need to tell their followers how much they were paid for a brand deal, but they cannot claim only that they were given free product when they were also paid for their endorsement. Similarly, it is likely not sufficient for an influencer to thank a brand or to say that they are excited to partner with a brand without further disclosing what that partnership looks like.

If advertisers and endorsers fail to disclose a material connection, the FTC can send a "Notice of Penalty Offense" and give the company an opportunity to cease their unfair or deceptive practice. If companies continue their alleged misconduct, the FTC can seek penalties of up to $50,120 per violation.

These new lawsuits come at the first time in the last decade where the FTC has not appeared focused on social media endorsements. In October 2021, for example, it flooded 700 "Notice of Penalty Offenses" on companies to give them "actual knowledge" that certain deceptive endorsement-related conduct could result in steep penalties. In 2023, the FTC updated the Endorsement Guides to provide heightened standards for "clear and conspicuous" disclosure and additional guidance for posts created in exchange for free or reduced-price products. However,

three of the five FTC Commissioners have departed since President Trump took office, and the Commission has not expressed interest in influencer disclosure practices since then. The current FTC has continued enforcing other areas that it had previously flagged as a priority (e.g., its recent lawsuit against Uber concerning its automatic renewal practices).

What Should Retailers Do?

Brands and influencers face significant legal exposure for failing to clearly and conspicuously disclose paid endorsements. To protect your company from liability:

- **Educate influencers**: Ensure that influencers understand the disclosure requirements before they create and post content, and that disclosures are clear and conspicuous-not buried in a long caption or a vague "thank you" to the brand.
- **Monitor compliance**: If you approve influencer content before it is posted, confirm that it includes the necessary disclosures. Otherwise, monitor the accounts for the influencers you work with that could have disclosure requirement-like influencers you have sent free products.
- **Remedy non-compliance and prevent future non-compliance:** If an influencer posts sponsored content without a clear and conspicuous disclosure, reach out and have them update the post as soon as possible. Remind them that failing to disclose could open them up to liability too.

Conclusion

Retailers should use this opportunity to carefully take stock of their current practices to ensure that they, and the influencers they work with, comply the FTC's Endorsement Guides. Benesch's Retail & E-Commerce Team has advised numerous retailers on these issues and is standing by.