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Issue Article

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THE LEGAL ASPECTS OF INFLUENCER ADVERTISING IN THE USA

Abstract: *This article explores the legal dimensions of influencer advertising in the USA. It addresses the regulatory landscape with an emphasis on disclosure requirements, intellectual property issues, and contractual terms. The analysis highlights how these legal structures are designed to ensure transparency, uphold ethical standards, and protect consumer rights in the rapidly expanding field of influencer marketing. The article also examines the enforcement mechanisms employed by regulatory bodies to ensure compliance. Potential legal risks and liabilities for both influencers and brands are discussed.*

Key words: *influencer marketing, legal regulations, disclosure requirements, intellectual property, contractual terms, ethical standards, consumer rights, digital advertising.*

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Introduction

Influencer marketing has become an integral part of the advertising strategies of many businesses, offering a powerful means to connect with diverse audiences in authentic and engaging ways. Influencers – individuals with substantial followings on social media platforms – leverage their reach and credibility to promote products and services, often blurring the lines between personal endorsements and paid advertising. This shift in marketing dynamics has not only transformed traditional advertising methods but has also introduced new challenges in the regulatory landscape.

As influencer marketing grows in scope and influence, so too does the need for a robust legal framework to ensure transparency, consumer protection, and ethical practices. The complexities of this marketing strategy have raised significant concerns among regulators and the public alike. Understanding the legal aspects of influencer marketing is important for both influencers and brands to navigate the potential risks and liabilities associated with this form of advertising. The goal of this article is to provide an analysis of the legal issues surrounding influencer advertising in the USA, with a focus on disclosure requirements, contractual obligations, and ethical boundaries.

Main part. Influencer marketing in the USA

With the rise of social media platforms like Instagram, YouTube, and TikTok, influencers have gained unprecedented power to shape consumer behavior. The growth of influencer marketing in the USA is fueled by the trust that consumers place in influencers, who are often seen as more relatable and credible than traditional celebrities. This dynamic has led brands to invest heavily in partnerships with influencers, ranging from micro-influencers with niche audiences to mega-influencers with millions of followers. In 2023, global spending on influencer marketing reached $34,08 billion, with $26,09 billion spent in the USA [1].

According to a survey conducted among influencers in the USA in 2023, the majority are willing to consider advertising integrations only on a commercial basis (fig. 1).

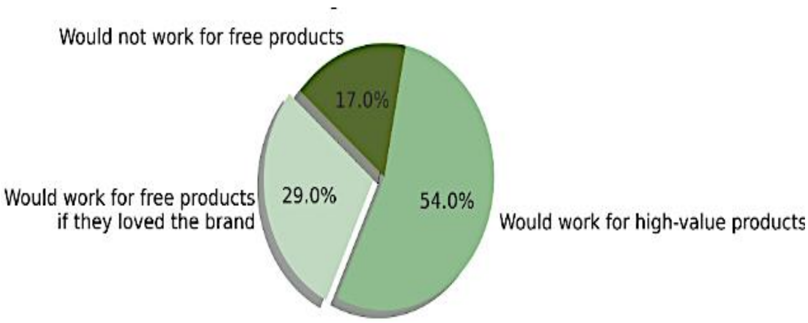

Figure 1. Influencers' willingness to work for free products [2].

As the industry has grown, so too have the legal and ethical challenges associated with it. Ensuring transparency and maintaining ethical standards have become central concerns, prompting increased regulatory scrutiny and the need for clear legal guidelines. Understanding the legal landscape of influencer marketing in the USA is essential for both influencers and brands.

Regulatory framework and compliance in influencer marketing

Influencer marketing has become a powerful tool in the advertising industry, necessitating clear and transparent communication between influencers and their audiences. To ensure that consumers are not misled by influencer endorsements, the **Federal Trade Commission** (FTC) in the USA has established guidelines that mandate the disclosure of any material connections between influencers and the brands they promote. These guidelines are important for maintaining consumer trust and protecting against deceptive advertising practices [3].

The FTC requires that any material connection – such as monetary payment, free products, discounts, or other forms of compensation – between an influencer and a brand be disclosed in a manner that is clear, conspicuous, and easy for consumers to understand. The disclosure must be placed in a location where it cannot be easily missed, such as at the beginning of a social media post or prominently within a video. For instance, influencers are advised to use unambiguous terms like «ad», «sponsored», or «paid partnership» to clearly communicate the nature of their relationship with the brand [4]. The FTC emphasizes that disclosures should be in plain language, easily understandable by the average consumer, and should not be hidden in lengthy captions, obscure hashtags, or buried at the end of a post where they might go unnoticed. In addition to transparent endorsement disclosure, the endorsement itself must be truthful and not deceptive. Simply put, influencers cannot make statements or claims that a brand itself could not make. Furthermore, brands should monitor the content of social media posts closely, as they can be held liable for an influencer's failure to comply with the law, even if the brand is not directly at fault.

Beyond federal regulations, certain states impose even stricter standards. California, for example, is particularly rigorous in enforcing consumer protection through laws such as the **Unfair Competition Law** (UCL) and the **False Advertising Law** (FAL), incorporated in the California Code Business and Professions Code. These laws grant broad enforcement powers to the state attorney general and allow for civil actions by private individuals [5]. They provide for remedies including injunctive relief and restitution, which can lead to substantial financial penalties for non-compliance.

In 2023, the regulatory environment in the USA became even more complex with the introduction of five new state-level data privacy laws. These laws, implemented in Virginia, Colorado, Connecticut, Utah, and California, have significantly impacted how businesses, including those involved in influencer marketing, handle consumer data.

Intellectual property concerns in influencer marketing

Intellectual property (IP) laws play an important role in regulating influencer marketing, where the use of copyrighted materials, trademarks, and other protected content is pervasive. Influencers frequently incorporate music, images, logos, and other branded materials into their content, which can lead to potential IP infringement if not properly licensed or authorized [6]. In the USA, both federal and state laws govern these aspects of influencer marketing.

The intersection of IP law with influencer marketing is particularly significant because it involves both the protection of creative works and the enforcement of trademark rights. The **Lanham Act**, which governs trademark law at the federal level, and the **Copyright Act**, which protects original works of authorship, are two key statutes that influencers and brands must navigate.

Navigating IP concerns in influencer marketing requires a thorough understanding of the various legal frameworks that protect creators' rights and brands' identities. The table 1 provides an overview of key IP issues relevant to influencers and highlights recent legal cases that underscore the importance of compliance with USA federal and state laws.

Table 1. IP concerns in influencer marketing [7-10].

Aspect	Relevant law	Description	Case study
Copyright infringement	USA Copyright Act (17 U.S.C. § 101 et seq.)	This law protects original works such as music, videos, and images. In the influencer marketing context, influencers must ensure they have the right to use any copyrighted material in their content.	Strike 3 Holdings, LLC v. John Doe (2023): An influencer was found liable for sharing copyrighted content online without permission, highlighting the need for proper licensing.
Trademark infringement	Lanham Act (15 U.S.C. § 1051 et seq.)	Governs the use of trademarks, preventing unauthorized use that could confuse consumers. Influencers must ensure they have permission to use brand logos or slogans.	Petunia Products, Inc. v. Rodan & Fields, LLC (2023): An influencer's promotion of a similarly named product led to a trademark infringement ruling.
Right of publicity	California Civil Code § 3344	Protects against the unauthorized commercial use of an individual's name, image, or likeness, particularly relevant to influencers who monetize their personal brand.	Kardashian v. Missguided (2020): Kim Kardashian won a lawsuit against Missguided for using her likeness and name in promotional material without consent
Fair use doctrine	USA Copyright Act (17 U.S.C. § 107)	Allows limited use of copyrighted material, but its boundaries are often contested.	Schneider v. YouTube, LLC (2023): The court ruled that an influencer's use of copyrighted material exceeded fair use limits.

According to the author, the complexities of IP law are particularly significant in the realm of influencer marketing, where the use of copyrighted content, trademarks, and personal likenesses is commonplace. Compliance with IP laws is not just a legal obligation but a crucial element in maintaining the integrity of both the influencer and the brand [11]. It is essential for influencers to obtain proper permissions and licenses before using any third-party content, to clearly understand the boundaries of fair use, and to respect the trademark rights of the brands they collaborate with. By doing so, they not only protect themselves from legal risks but also contribute to a more ethical and transparent marketing environment.

Contractual obligations in influencer marketing

Contracts form the backbone of any formal agreement between influencers and brands, ensuring that both parties are clear on their rights, obligations, and expectations. These contracts are essential for protecting both influencers and brands, providing legal recourse in the event of disputes. Understanding the common contractual terms and clauses in influencer agreements is critical for mitigating risks and ensuring successful partnerships (table 2).

Table 2. Key contractual obligations in influencer marketing [12, 13].

Contractual element	Description	Importance
Scope of work (SOW)	Details the specific content to be created, platforms to be used, and timelines for deliverables.	Prevents ambiguities and ensures both parties have clear expectations.
Compensation and payment terms	Specifies payment amounts, methods, and additional incentives tied to performance metrics.	Ensures fair remuneration and clarity on financial obligations.
Exclusivity clauses	Prohibits influencers from promoting competing products during the campaign period.	Protects the brand's market position and ensures message consistency.

Disclosure and compliance	Requires adherence to legal regulations, such as FTC guidelines on sponsored content disclosure.	Ensures legal compliance and safeguards the brand from potential regulatory penalties.
Termination clauses	Outlines the conditions for ending the contract and any penalties involved.	Provides a clear exit strategy and reduces the risk of disputes over contract termination.

According to the author, confidentiality provisions and the management of reputational risks are equally important in influencer marketing contracts. Confidentiality clauses are essential in safeguarding sensitive information that brands share with influencers, such as unreleased product details, marketing strategies, or proprietary data [14]. The secure handling of this information is important not only for maintaining a competitive edge but also for upholding the integrity of the brand-influencer partnership. Moral clauses, which address reputational risks, are vital in the context of influencer marketing. Given the public and highly visible nature of influencers' work, any behavior by the influencer that could damage the brand's reputation necessitates swift and decisive action, often justified by such clauses in the contract.

In 2020, influencer and supermodel Bella Hadid faced significant backlash that led to the loss of advertising contracts due to reputational risks. The incident occurred after she posted an Instagram story that was perceived as offensive by some of her brand partners and their customers. Bella Hadid shared a photo of her foot placed near an aircraft with the flags of Saudi Arabia and the United Arab Emirates (UAE), which many interpreted as disrespectful to the flags of these countries.

The backlash was swift, particularly in the Middle East, where many social media users and consumers called for a boycott of brands associated with Hadid. In response, several luxury brands, including Dior and Bulgari, distanced themselves from her. Although Bella Hadid issued an apology stating that her post was misinterpreted and not intended to disrespect any nation, the damage to her relationships with these brands was already done.

In a more recent incident, in 2023, Dior severed its advertising contract with Bella Hadid following her public comments regarding the Palestinian-Israeli conflict. Hadid, who has been vocal about her support for Palestinian rights, made statements that sparked controversy and backlash, particularly among Dior's global customer base. The brand, concerned about potential reputational damage and the polarizing nature of the topic, decided to end their association with Hadid. This further illustrates the critical role that reputational risk management plays in influencer marketing, where public statements and actions by influencers can have immediate and far-reaching consequences for their business relationships.

Regulatory enforcement of influencer marketing

The enforcement of influencer marketing regulations in the USA is primarily driven by the FTC, which plays a central role in ensuring that influencers and brands adhere to advertising laws. The FTC employs a range of methods, including issuing warning letters to those who fail to comply with disclosure guidelines [15]. These letters typically specify the violations and offer guidance on how to correct them. In cases of more severe or repeated violations, the FTC can initiate formal investigations, which may lead to enforcement actions such as consent orders, settlements, or even litigation. Such actions are often publicized to deter others from disregarding the guidelines.

Beyond the FTC, state agencies and private entities also contribute to the enforcement of influencer marketing laws. For example, in California, the UCL and FAL provide additional layers of enforcement. These laws allow for state-led actions and private lawsuits against individuals or companies engaged in deceptive marketing, making California a particularly challenging environment for influencer marketing.

The FTC has the authority to impose substantial fines on those who violate disclosure requirements, with penalties potentially reaching tens of thousands of dollars per violation. Sanctions are not limited to financial penalties; the FTC can also issue cease-and-desist orders to stop certain marketing practices immediately. Consent decrees are often used in settlements, requiring ongoing compliance monitoring and reporting for several years.

State-level enforcement can result in further penalties, including fines, restitution payments, and injunctions. This dual layer of enforcement – federal and state – creates significant pressure on influencers and brands to comply with the law. As influencer marketing continues to expand, the FTC and other regulatory bodies are likely to intensify their oversight, making it crucial for all involved parties to stay informed and adhere to the relevant regulations to avoid legal consequences.

Conclusions

The legal framework governing influencer advertising in the USA is notably rigorous, particularly in terms of ensuring transparency and consumer protection. Influencers are required to disclose any material connections with brands, as mandated by the FTC. This regulatory environment reflects a significant effort to maintain ethical standards in a rapidly evolving industry. Influencers and brands are obliged to comply with federal laws, such as the Lanham Act and the Copyright Act, and state laws, particularly those in states like California, where additional protections are enforced. These stringent regulations underscore the importance of clarity in advertising practices, aiming to prevent deceptive marketing and protect consumer rights.

In comparison to other countries, the USA regulatory approach is characterized by a more proactive and enforcement-driven stance, particularly at the federal level through the FTC, and at the state level through various consumer protection laws. For instance, European countries often rely on broader privacy regulations like the General Data Protection Regulation (GDPR), which, while comprehensive, does not focus as specifically on influencer marketing as USA laws do. Additionally, some countries may have less stringent or more fragmented regulations, leading to variations in enforcement and compliance standards. The USA model is distinctive in its combination of federal oversight, detailed guidelines on disclosures, and the potential for significant penalties, making it one of the most robust legal environments for influencer marketing globally.

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