

## FTC Guidelines and the Risks of Undisclosed Influencer Marketing

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It's safe to say that social media has become a big part of our everyday lives. It's a space where we connect with friends and family, stay updated with the latest news, and keep up with trends in culture. It's also where we can learn new things, discover hobbies, or just unwind with a good laugh. But beyond the social interaction, social media has also become a constant stream of advertisements, whether from brands promoting their own products, celebrities sharing their latest endorsements, or the influencers we follow for lifestyle inspiration.

As influencers gain more of a following and increase their wealth, more and more people are trying to break into this lucrative field.<sup>1</sup> In fact, nearly one-third of preteens say that becoming an influencer is a career goal.<sup>2</sup> While it may seem like an exciting and glamorous profession, being an influencer is not just unboxings and tutorials.

When promoting products, there are certain requirements that influencers must follow. Failing to meet these guidelines can result in serious legal consequences.<sup>3</sup> Under Section 5(a) of the Federal Trade Commission Act, it is illegal for businesses to engage in deceptive advertising practices.<sup>4</sup> This includes influencers who promote products or services without clearly disclosing that they are being paid or compensated for it.<sup>5</sup> The FTC's guidelines make it clear that influencers must use obvious terms, like ad or sponsored, to indicate a paid partnership.<sup>6</sup>

When influencers fail to add clear disclaimers to their posts, they risk misleading their audience into thinking their endorsements are impartial or organic when, in fact, they are paid promotions. Violation of the FTC's guidelines can result in orders requiring defendants to pay money and abide by various requirements in the future.<sup>7</sup> Additionally, the FTC could seek substantial civil penalties.<sup>8</sup>

For influencers, understanding and following the FTC guidelines is crucial to minimizing legal risks and maintaining trust with their audience. However, the influencer marketing landscape is always evolving, so staying informed about any updates from the FTC is key to avoiding potential issues in the future.

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<sup>1</sup> Faye Tsakas, *How Being an Influencer Became a New American Dream*, N.Y. TIMES (Dec. 10, 2024), <https://www.nytimes.com/2024/12/10/opinion/child-influencers-consumerism.html>.

<sup>2</sup> Stephanie Sy & Dorothy Hastings, *The Dangers of Parents Sharing Their Children's Lives on Social Media*, PBS NEWS (Feb. 23, 2024), <https://www.pbs.org/newshour/show/the-dangers-of-parents-sharing-their-childrens-lives-on-social-media>.

<sup>3</sup> *Social Media Influencer Marketing & Related Legal Issues*, JUSTIA (Dec. 2024), <https://www.justia.com/business-operations/legal-issues-for-social-media-influencer-marketing/> [<https://perma.cc/TH65-EA96>].

<sup>4</sup> 15 U.S.C. § 45.

<sup>5</sup> *Social Media Influencer Marketing & Related Legal Issues*, *supra* note 3.

<sup>6</sup> *Disclosures 101 for Social Media Influencers*, FED. TRADE COMM'N (Nov. 2019), <https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers> [<https://perma.cc/5X33-L4N6>].

<sup>7</sup> *FTC's Endorsement Guides: What People Are Asking*, FED. TRADE COMM'N (June 2023), <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> [<https://perma.cc/4KFS-WYFB>].

<sup>8</sup> *Id.*