UPDATE: Influencers Continue to Post Sponsored Content to Social Media Without Adequately Disclosing that the Post Is a Paid Advertisement

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In April, the Federal Trade Commission (FTC) sent out 90+ letters to brands and influencers, notifying the parties of their obligations to disclose material connections in sponsored social media posts. The letters provided specific insight as to the type of disclosures that the FTC deems sufficient for notifying the consuming public of the promoter’s material connection to the product that is the subject of their social media posts. Since then, consumer advocacy group Public Citizen has been monitoring the compliance of influencers with the FTC guidelines. The group has found that the letters have had little effect on the posting practices of influencers. Memorializing their findings and concerns in writing, Public Citizen, in conjunction with the Campaign for a Commercial-Free Childhood and the Center for Digital Democracy, wrote a letter to the FTC, asking the federal agency to explore certain enforcement mechanisms.

In their letter to the FTC, Public Citizen notes that of the 46 influencers who were sent letters notifying them of their disclosure requirements, only one influencer consistently complied with the guidelines throughout the six week observation period. Furthermore, of the 412 posts that featured presumably sponsored content, only 84 posts displayed compliant disclosures.

Public Citizen, the Campaign for a Commercial-Free Childhood and the Center for Digital Democracy, also draw attention to the types of products that are often promoted through undisclosed sponsored posts that are part of the health and beauty industries. These types of products include makeup, fake tan treatments, vitamin injection treatments, and “body contouring” cellulite removal treatments. Public Citizen asserts that a large section of the audience for such advertising consists of “young and impressionable consumers” who look up to social media influencers. Failing to disclose that the posts are paid advertisements may have a great impact on this segment of the population, Public Citizen argues. The products promote “an unrealistic, and potentially harmful, standard of beauty and health” among young people that could have a lasting impact.

The letter requests that the FTC bring enforcement actions against non-compliant influencers, seeking penalties for posting sponsored content without the requisite disclosures. In addition, Public Citizen suggests that the FTC work with Instagram to create a simpler and more direct means by which influencers can signify that the post has been paid for. Importantly, Instagram is currently developing a new feature that will allow users to clearly disclose that the post is sponsored. This feature, however, is in the early phase of development, being tested with select users. Further, Public Citizen appears to be critical of the feature, as it falls short of the FTC’s guidelines. Notably, the new feature uses the term “partner” to denote an existing relationship between the influencer and the product. The FTC has specifically stated that such terminology is not clear enough and therefore falls short of the disclosure requirements, instead preferring terms such as “sponsored” or “ad.”

TAKEWAY: If social media influencers failed to heed the advice of the FTC with regard to disclosure of paid posts, Public Citizen’s letter should put them on further notice that this issue continues to be on the FTC’s radar, and that of
consumer protection groups.

Tags: Disclosure Obligations, FTC, Social Media Marketing