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NAVIGATING THE WORLD OF TIKTOK INFLUENCERS AND USING ADR METHODS TO NEGOTIATE BRAND DEALS AND CONTRACTS

Peri Ayzidor

Anyone using social media in the last three years has been exposed to or heard of TikTok. With over 1.4 billion monthly active users¹, the social media platform TikTok has taken the world by storm. It allows users to create videos lasting from 15 seconds to three minutes, covering thousands of categories, from makeup tutorials to tutoring explanations. The app has been a particular hit for influencers. An influencer is someone who has the power to impact the purchasing decisions of others because of a certain appeal or relationship with the audience.² Many influencers have taken advantage of the app's huge audience to capitalize on brand deals with popular companies that would pay influencers to advertise their products. The reason that brands reach out specifically to influencers to advertise their products is because of the creative techniques utilized to make the products so appealing that the audience must have them.³ The current average is around \$2,741 for just one brand post and/or collaboration.⁴ The greater the following, the more brands are willing to pay for their promotion.

That being said, when it comes to negotiating the payment for brand posts, TikTok influencers could greatly benefit from the alternative dispute method of negotiation that incorporates strategies such as collaboration, accommodation, and even competition to get the

¹ *TikTok Statistics to Know in 2023*, INFLUENCITY, <https://influencity.com/resources/studies/tiktok-influencer-marketing-study-statistics/> [<https://perma.cc/SB7Z-BXYB>] (last visited Nov. 9, 2023).

² Werner Geysler, *What Is an Influencer—Social Media Influencer Defined [Updated 2024]*, INFLUENCER MARKETINGHUB (Oct. 26, 2023), <https://influencermarketinghub.com/what-is-an-influencer/> [<https://perma.cc/A7UU-SGHG>].

³ Rafaella Aguiar, *3 Reasons Why TikTok Is Pivotal for Influencer Marketing*, PIXLEE TURNT0, <https://www.pixlee.com/blog/3-reasons-why-tiktok-is-pivotal-for-influencer-marketing> [<https://perma.cc/7MMT-NV8U>] (last visited Nov. 9, 2023).

⁴ *How Much Do TikTok Influencers Charge?*, IZEA (Mar. 6, 2023), <https://izea.com/resources/how-much-do-tiktok-influencers-charge/> [<https://perma.cc/3GFT-KV99>].

best price for their work and creativity.⁵ Negotiation is an alternative dispute method which can be defined as the “back-and-forth communication”⁶ between parties to reach an agreeable solution. While there is typically no “winner” in a negotiation, both parties should be able to find a common ground.

There are four negotiation styles that are incorporated into every negotiation: collaboration, accommodation, competition, and avoiding. The most used styles being collaboration, accommodation and even a bit of competition. Each style has their own set of pros and cons that would be beneficial when reaching that common ground. The first style of collaboration would be the most beneficial to TikTok influencers when fine tuning their brand deal agreements. The negotiation style of collaboration would include asking the brand their budget and/or set price for a content creation post,⁷ as well as being transparent about your reservation point, which is the point at which you walk away.⁸ Showing companies that you are willing to walk away projects the ability to be concise and even a bit competitive when it comes to negotiating compensation. Using a competitive strategy would entail using one’s personality and/or brand strength to get the desired result, even it means putting pressure on the situation.⁹ For example, if a certain brand wants a promotion video or post completed in a short amount of time, TikTok influencers could utilize a more competitive approach as the timeline is narrower and the brand has little room to negotiate.¹⁰

⁵ ROGER FISHER ET AL., *NEGOTIATION GENIUS: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 64 (Bruce Patton et al. eds., 3d. ed. 2011).

⁶ Katie Shonk, *What is Negotiation?*, HARV. L. SCH. PROGRAM ON NEGOT. (Aug. 3, 2023), <https://www.pon.harvard.edu/daily/negotiation-skills-daily/what-is-negotiation/> [https://perma.cc/89V2-UMG7].

⁷ Quinn Schwartz, *Top 11 Influencer Tips for Landing the Perfect Creator Partnership*, GRIN (June 2023), <https://grin.co/blog/top-influencer-negotiation-tips/> [https://perma.cc/ZMK4-NKPC].

⁸ DEEPAK MALHOTRA & MAX H. BAZERMAN, *NEGOTIATION GENIUS: HOW TO OVERCOME OBSTACLES AND ACHIEVE BRILLIANT RESULTS AT THE BARGAINING TABLE AND BEYOND* 34 (2007).

⁹ Calum Coburn, *Negotiation Conflict Styles*, HARV. UNIV., <https://hms.harvard.edu/sites/default/files/assets/Sites/Ombuds/files/NegotiationConflictStyles.pdf> [https://perma.cc/CAA3-HS8B].

¹⁰ Candace King, *From Payment Terms to Exclusivity: How to Negotiate Influencer Contracts*, HYPE—JOURNAL (Mar. 1, 2023),

If, for example, a TikTok influencer is just starting out and has little experience in the world of brand posts, then a style that would benefit their brand deal negotiation is accommodation. The negotiation strategy of accommodation is typically used when influencers are in the less powerful position. The smaller amount of influence that an individual has, in this case the number of followers or viewers, the less power that person has when negotiating for a higher brand deal. A great example of the accommodation strategy used in negotiations would be setting an amount of content for a budget put forth by the brand.¹¹ This way, TikTok influencers are able to accommodate the brand with a set amount of social media content while negotiating a set price for their advertisements.

When brands decide what TikTok influencers to work with, they evaluate the overall content of their posts, the values and morals that are shared by both parties, and their experience with promoting products.¹² TikTok influencers can portray a certain type of appeal to their specific audience and use that as leverage in brand deal negotiations.¹³

These factors could be incorporated into the three most used negotiation strategies of communication, competition, and accommodation to successfully negotiate an agreed upon brand deal between companies and TikTok influencers.

<https://hypeauditor.com/blog/from-payment-terms-to-exclusivity-how-to-negotiate-influencer-contracts/>
[<https://perma.cc/XL4Q-TYWWM>].

¹¹ Naomi Genota, *10 Savvy Ways You Can Negotiate Influencer Brand Collaborations*, NAOHMEDIA, <https://naohmedia.com/negotiate-influencer-brand-collaborations/> [<https://perma.cc/N2WN-FX4H>] (last visited Nov. 9, 2023).

¹² *How to Negotiate with Brands as an Influencer*, CHRISTINA GALBATO, <https://christinagalbato.com/negotiate-with-brands/> [<https://perma.cc/MLY3-8Y3G>] (last visited Nov. 9, 2023).

¹³ Olivia Davis, *The New Normal: Navigating Legal Challenges in the World of Influencer Marketing & How ADR Can Help*, 23 PEPP. DISP. RESOL. L. J. 70, 75 (2023).