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The FTC's Efforts to Make Influencer Marketing Transparent

BY SHAYNA GRIFE / ON FEBRUARY 14, 2023

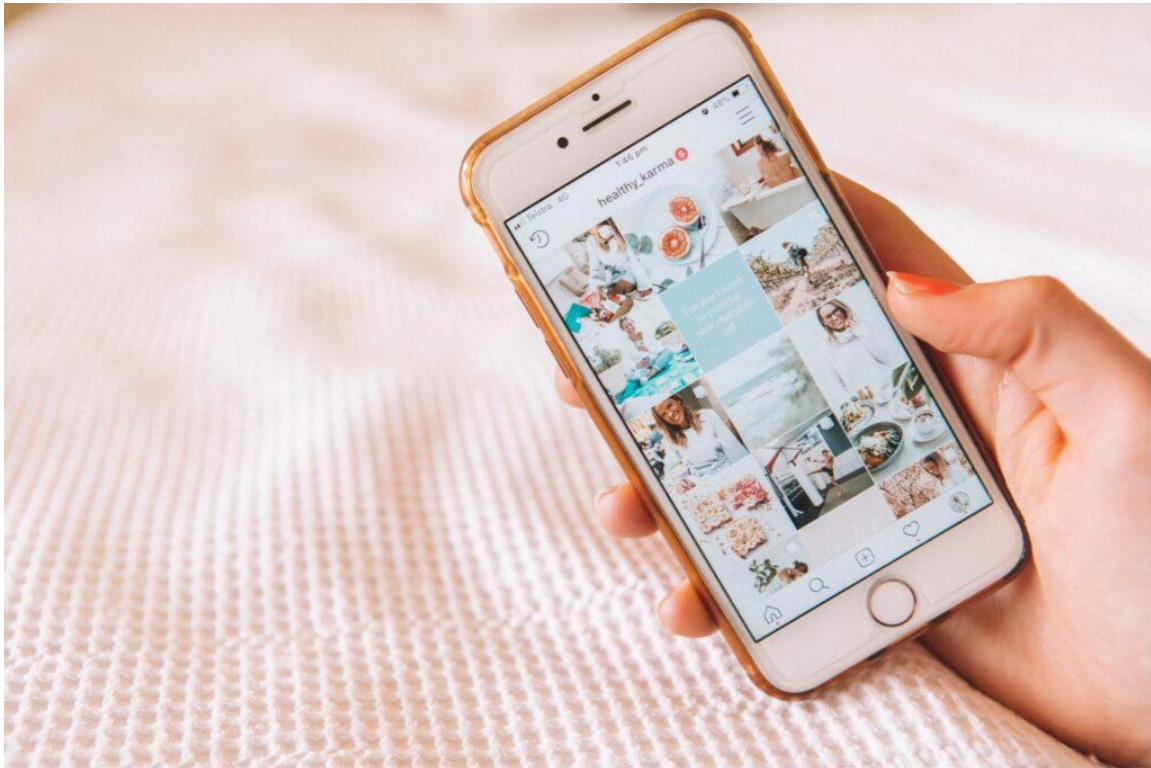


Photo by Maddi Bazzocco on Unsplash

Influencer culture has become a growing phenomenon with a new profession embodying nearly 50 million people with a market size of \$104 billion.¹ People are now choosing “influencer” as their career and turning to social media over college. The financial payoff is high and the fame of being an influencer is making the profession the new A-list celebrities.² Being able to *influence* someone does not come without regulation. When influencers promote products or accept brand deals, they must follow certain guidelines issued by the Federal Trade Commission (FTC).³ Influencers tag their sponsored posts with the hashtag “Ad” to put the public on notice that the post is paid for, but now the FTC is saying that is insufficient.⁴

In 2019, the FTC released a suggestive brochure to give influencers a guide to how to be compliant with the law.⁵ Their goal is to make it clear and obvious as to what is a sponsored endorsement. For example, a notice that says “Ad” must be clear and obvious for viewers to see.⁶ Often you will see influencers put it at the bottom of the post with several lines of spaces, so it is not easily seen by people

scrolling by the post. The FTC's latest suggestions mention placing the notice at the beginning of the post instead of the end to give real, actual notice instead of hiding it at the bottom of the post.⁷ Other disclosures that need to be made are any personal, financial, or family relations that exist between the influencer and the brand.⁸

The term influencer in itself is vague. It is essentially anyone who can influence, including employees.⁹ Sony had an issue when they used their employees as influencers in 2014 to advertise their product without disclosing their relationship to the company.¹⁰ Following the purpose of the regulations, transparency, an influencer cannot talk about an experience that they have not had or a product they have not tried.¹¹

The issue at hand is that influencer platforms can be used to deceive the public. With the growth in popularity of influencers who have amassed enormous followings, like Charli D'Amelio with 149.6 million Tik Tok followers¹² and about 49 million Instagram followers,¹³ what they endorse matters and has real, tangible impacts. People rely on what influencers endorse and knowing it is a paid sponsorship or that they are receiving free products in return for their review affects the credibility of the advertisement.¹⁴ Influencer marketing has proven to be effective because influencers have niche followings that look to them for advice as opposed to celebrities who people idolize or view as unattainable.¹⁵

Google and iHeartMedia are facing legal issues for using influencers to promote their new Pixel 4 phone before they received the product.¹⁶ Maura Healey, Massachusetts Attorney General, speaks on the weight that a "first-hand experience" carries with buyers.¹⁷ The companies will have to pay a \$9.4 million fine for deceptive advertising.¹⁸ Google and iHeartMedia are two major companies that most people interact with on a daily basis. False advertising is deceiving to the public and is considered unfair and unethical business practices that warrants government intervention.

Influencers have grown to be an effective tool in marketing products and brands, but this new profession needs to follow FTC regulations. When an individual is using themselves as a brand it becomes difficult to regulate them as a business, but it is imperative that they do so to avoid hefty fines and legal issues, like that of Google. The overarching purpose of the FTC's new guidelines and legislation is to ensure full and prominent disclosure.¹⁹

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