

New Developments: Branded Content on Social Media

With the prevalence of social media today, it comes as no surprise that increasing sums of money are changing hands between advertisers and their ad agencies, on one side, and celebrities and others with strong social media followings, on the other side. It is also no surprise that this increase in economic activity has been accompanied by an increase in regulatory scrutiny. In April, the Federal Trade Commission (FTC) announced that it issued more than ninety letters to social media influencers and advertisers outlining the importance of following federal advertising disclosure requirements in connection with sponsored posts on social media channels.

Here's what you need to know:

- ➔ **Identifying what content is or is not compliant with advertising disclosure requirements may not be a simple task.** Given how lucrative advertising on social media can be, both the companies being promoted and the celebrity or influencer themselves have significant motive to work within the FTC's guidance. The FTC **press release** announcing the letters as well as its accompanying **blog post** warned against social media techniques such as not mentioning brand connections or presenting brand connections in unclear ways. For example, the FTC staff noted that brand connection disclosures should not be placed after a "more" link or in other places where viewers do not often check. The FTC staff also suggested that unclear or potentially confusing brand connection disclosure language – such as "#partner" – should be avoided.
- ➔ **The FTC's decision to send letters to individual influencers in addition to advertisers is a new development.** The FTC has historically focused on educating, regulating, and enforcing its social media disclosure standards with brands and advertising agencies, but these letters indicate the agency is now paying attention to the conduct of prominent individual influencers as well.
- ➔ **Technological help may be on the way.** In recent months, prominent social media channels have added new tools and features that may make it easier for advertisers and influencers to make their branded content disclosures clear and prominent on those platforms in accordance

with FTC standards. For example, Facebook offers (and its policies require the use of) a branded content tool that permits users to add the term “paid” underneath the “with” tag that identifies the relevant brand. YouTube and Instagram have also added tools that make it easy to add a “paid” tag to content posted on those platforms.

The FTC continues to focus its resources on improving brand connection disclosures in social media posts. By sending warning letters to prominent influencers as well as to advertisers, the agency may be signaling that it plans to expand its universe of potential enforcement targets in this space. Responsible advertisers and influencers should both evaluate their current social media disclosure practices in light of the new guidance from the FTC. Such evaluations should include a review of the new tools and features prominent social media platforms have recently released to improve available compliance mechanisms.