

Influencer Campaign Lawsuits Signal New Endorsement Risks

By **Gonzalo Mon** (April 16, 2025)

In 2023, the Federal Trade Commission released updates to its Guides Concerning the Use of Endorsements and Testimonials in Advertising, and sent warning letters to two trade associations and a dozen influencers, suggesting that the commission would soon enforce the new requirements.

The FTC has been relatively quiet on this issue ever since, resulting in some companies taking risks based on the assumption that the likelihood of enforcement is low. Although it may be low at the moment, we have seen challenges come from other places, including the BBB National Programs' National Advertising Division.



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More recently, we've started to see plaintiffs file class actions against companies alleging that their influencer campaigns violate the Endorsement Guides and various state laws. Two similar lawsuits that were filed this year suggest that companies now have new risks to take into account when working with influencers.

The Endorsement Guides

Under the Endorsement Guides, if an influencer has a "material connection" to the company whose products they are promoting, the influencer must include a "clear and conspicuous" disclosure that mentions their connection to the company.

Although previous versions of the Guides left that term open to interpretation, the most recent version defines "clear and conspicuous" in 229 words and provides examples of disclosures that do and do not meet that standard.

Among other things, the Guides state that:

If the endorsement is made through visual means, the disclosure should be made at least visually. If the representation is made audibly, the disclosure should be made at least audibly. And if the representation is made through both visual and audible means, the disclosure should be made both visually and audibly.

In addition, the Guides state that a disclosure must be unavoidable. For example, as we saw in the FTC's 2020 settlement with Teami over an influencer campaign, the FTC thinks that if consumers need to click "more" or any other link to see a disclosure, it isn't unavoidable. Instead, disclosures must be immediately visible and located in a place where viewers are likely to see them.

Mariana Dubreu v. Celsius

In January, a California woman filed a class action in the U.S. District Court for the Central District of California against Celsius Holdings Inc. and three influencers — Devon Windsor, Emily Tanner and Erika Wheaton — over a campaign to promote the company's energy drinks.

In *Mariana Dubreu v. Celsius Holdings*, the plaintiff claims that she follows each of the

influencers on Instagram and saw posts in which they promoted Celsius products. The complaint alleges that the influencers either failed to disclose that the posts were sponsored or that they "buried a small disclosure so it would be almost impossible for a social media user to discern the fact that the post was sponsored."

Screenshots from each influencer support that allegation. While some posts don't include any disclosures, one includes a disclosure "below the fold," amid other hashtags.

The plaintiff claims that she bought Celsius products relying on the influencer posts and that she "would not have purchased the Celsius products if she knew that the Influencers were paid to endorse Celsius and that the Influencers' claims were illegal, unfair and misleading."

The plaintiff also alleges that Celsius sells its products "at inflated prices, exclusively because of the way the Celsius products are advertised on social media and the misleading content of the advertisement." Without much explanation, the complaint states that "the Celsius products purchased proved to be of a lower value than the price paid."

The complaint alleges that Celsius and the three influencers — each of whom is also individually named in the complaint — have violated the FTC Act and various California laws by promoting the energy drinks through undisclosed sponsored posts. The plaintiff seeks "to recover the difference between the price paid and the market value of the products as purchased."

Bengoechea v. Roadget Business Pte. Ltd. d/b/a Shein

A few weeks after the Celsius complaint was filed, plaintiffs residing in three states filed a class action in the U.S. District Court for the Northern District of Illinois against Shein and seven influencers — Bianca Anastasia Arcori, Abby Bagley, Manuela Brit, Tala Golzar, Anastasia Karanikolaou, Cydney Moreau and Cindy Prado — over a campaign to promote the company's fast-fashion products.

According to the complaint, some of the influencers didn't disclose their connection to the company at all. Other influencers "provide a buried small disclosure so it would be almost impossible for a social media user to discern the fact that the post was sponsored, including a long hashtag in a list of hashtags that only appear if the reader decides to press the 'More' button."

As with the Celsius complaint, this one includes screenshots to illustrate the issue.

The plaintiffs claim that they "would not have purchased the products if they knew that the Influencers were paid to pretend that they like Shein and endorse the brand." They also complain that they purchased the "products at artificially inflated prices, exclusively because of the way the Shein products are advertised on social media and the misleading content of the advertisement."

The plaintiffs attempted to support this allegation by looking at what similar companies charge for similar products.

The complaint alleges that Shein and the seven influencers — each of whom is also individually named in the complaint — have violated the FTC Act and laws in various states by promoting the company's products through undisclosed sponsored posts. The plaintiffs seek "damages, declaratory judgment, permanent injunctive relief, disgorgement of ill-gotten monies, attorney's fees and costs."

The fact pattern in this case is similar to the one in the Celsius case. In fact, although the two lawsuits were brought by two different firms, the language in key sections of the complaints is almost identical.

What This Means

It's too early to predict how these cases will turn out. Based on the screenshots in the complaints, it's likely that both the FTC and National Advertising Division would conclude that the influencers' posts fail to comply with the Endorsement Guides. But it's not clear whether that failure can sustain these lawsuits or whether the plaintiffs' creative theory of damages will hold up to scrutiny.

If one firm can draw inspiration from another firm's complaint and use it as the basis for a lawsuit, it's certain that other firms can do that, too. In fact, we've seen this trend emerge in other areas — including website accessibility lawsuits and various types of privacy lawsuits — where plaintiffs easily find fact patterns to match their latest complaint template.

Fortunately, unlike other areas where we've seen a flood of copy-and-paste lawsuits, lawsuits over influencer campaigns should be fairly easy to avoid with proper planning. Here are some steps that companies should consider.

Provide influencers with specific instructions about how to disclose their relationship to brands. It's not enough to simply point them to the Endorsement Guides. Provide guidance about exactly what words the influencers have to use.

Just as important as the words influencers use is where influencers use those words. Provide guidance to ensure the disclosures meet the clear and conspicuous standard, and remember that in some cases, that may require more than just a textual disclosure in the post description.

Ideally, you should preapprove posts before they go live. That'll give you a chance to spot issues and fix them before anyone else notices them. Make sure that whoever is in charge of preapproving posts knows what they're looking for.

If you don't preapprove posts, you'll need a robust process to monitor posts after they go live. Again, whoever is in charge of monitoring must know what they're looking for. If they find a problem, you should contact the influencer and get it fixed as soon as possible.

Keep records of your compliance efforts. It's possible that things will slip and some posts will go live without the proper disclosures. If you get caught, it could be helpful to demonstrate that you have a robust compliance program and that the errant posts were not the norm.

It's not just companies that need to worry, either. Because these complaints name individual influencers, influencers also need to understand their disclosure requirements. If a company fails to provide good instructions on disclosures, influencers will still want to ensure that they comply with the Endorsement Guides.

In many cases, the legal fees necessary to deal with these complaints will far exceed the fees influencers get paid for the posts.

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[1] <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>.