

# Court Considers Vodka Influencers' Posts

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Two men – we'll call them Mario and Alin – purchased Blue Ice Vodka based, in part, on social media posts in which various influencers suggested that the vodka was a “healthy product” that can help with personal fitness and weight management. “After conducting some research,” both men discovered that Blue Ice Vodka “does not have any health benefits.” They also discovered that the influencers were paid to promote the vodka.

Feeling betrayed, Mario and Alin filed a lawsuit against 21st Century Spirits (the makers of Blue Ice Vodka) alleging – among many other things we won't cover in this post – that 21st Century Spirits and its influencers had made misleading health claims about the vodka and that the influencers hadn't disclosed that they were being paid by the company to promote the vodka, as they are required to do under the FTC's Endorsement Guides.

21st Century Spirits argued that they hadn't made any health claims. An Illinois federal court rejected that argument, citing a post in which an influencer stated: “I make fit-friendly cocktails that have fewer calories than an apple.” The court noted that some consumers would surely interpret this to mean that the vodka is healthy, but that whether that interpretation is reasonable shouldn't be decided by a judge at the motion to dismiss stage.

With respect to the plaintiffs' arguments that the influencers didn't comply with the Endorsement Guides, 21st Century Spirits countered that the Guides are “not law” but merely “advisory in nature.” The court noted that although the Guides are not the source of per se violations of statutes like Florida's false advertising law, even “interpretations” under the FTC Act are entitled to “due consideration and great weight” when analyzing whether something is deceptive under the law.

21st Century Spirits argued that the influencer posts weren't “endorsements” under the Endorsement Guides because the influencers merely mentioned the vodka. The court rejected that argument, noting that many influencers overtly promoted the vodka. For example, one influencer posted that “there's nothing better than relaxing with a smooth @blueicevodkausa cocktail in hand after a long day,” that the vodka “can definitely help you stay fit during quarantine,” and that consumers should have some delivered.

21st Century Spirits also argued that, even if the posts were endorsements, a disclosure wasn't necessary because a “reasonable consumer” wouldn't interpret the posts as “honest consumer advice.” The court reframed the argument in a better way, suggesting the company meant that because consumers would reasonably expect that the influencers were paid, a disclosure wasn't necessary. The court still rejected that argument because it's not clear whether consumers would have that expectation.

This case isn't over yet, but there are still some lessons you can learn at this stage. First, to save you

the time Mario and Alin spent researching the issue, we'll tell you that although it's fine to enjoy vodka periodically, vodka probably shouldn't form the foundation of your health and fitness plans. (If you remember [this post](#) from 2016, you may recall that gin shouldn't either.) But we're not just here to give you health tips - we're here to give you some legal tips, too.

To save you the time that 21st Century Spirits has spent fighting this issue, you need to pay close attention to your influencer campaigns. You need to ensure that your influencers don't make claims about your products that you can't support. And you need to ensure that your influencers clearly disclose their connections to your company. Although courts may not interpret the Endorsement Guides as strictly as the FTC will, they'll likely give some weight to the FTC's interpretations.