

FDA Is Still Keeping Up With The Kardashians

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March 24, 2021

When it comes to the legal side of working with influencers, smart companies focus on ensuring that influencers clearly disclose that they are working with the company. After all, that’s where regulators have focused most of their attention in recent years. But that’s not where a company’s obligations stop – companies also need to take steps to ensure that influencers comply with other laws.

In 2015, we [noted](#) that the FDA took issue with a social media post in which Kim Kardashian praised a morning sickness drug. Although Kim did disclose that she was working with the drug company, the FDA alleged she failed to comply with prescription drug advertising requirements because she didn’t disclose the “consequences that may result from the use of the drug as recommended.”

This month, the FDA expressed similar concerns about a video in which Khloe Kardashian touted Biohaven’s Nurtec ODT migraine treatment. In an untitled [letter](#) to Biohaven, the FDA writes that Khloe’s appearance on “The View” in July 2020 features misleading claims about the drug’s efficacy. Although Khloe claims that Nurtec ODT provided her relief in as little as 15-to 30 minutes, FDA asserts that that claim isn’t supported by the clinical trials and Khloe’s “personal experience does not adequately support the suggestion that the drug will” provide relief for others in the same time frame.



The FDA also expressed concerns about how required disclosures about the risks associated with the drug were made. Prescription drug advertising requires “fair balance” between the claims relating to the product benefits and disclosure of the risks. Although the interview segment contains prominent claims about the benefits of the drug in the audio portion, the required disclosures are “presented in a text-only format and small font. Moreover, the risk information only appears briefly for four seconds at the end of the video, after the close of [Khloe’s] presentation, where it is unlikely to draw the viewer’s attention.” Put another way, instead of the usual laundry list of unspeakable side effects

being rattled off, the segment ends with Whoopi Goldberg asking Kardashian to repeat the name of the drug and then saying “We’ll be right back.”

So, what’s the takeaway? If you’re an advertiser that is working with influencers, their posts are likely subject to the same legal requirements as your ads. In addition to making sure that influencers disclose that they are working with you, you need to take steps to ensure influencers comply with legal requirements specific to the product being advertised. In some cases – particularly if you work in a regulated industry – that may require providing guidance and training to influencers or reviewing their posts before they go live.