

FTC Staff Reminds Brands and Influencers About Disclosure Requirements

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In November, we [posted](#) that four consumer groups had sent letters to FTC, encouraging the agency to investigate and bring enforcement actions regarding the use of influencers on



Instagram. In what may be a response to that encouragement, the FTC just announced that it had sent more than 90 letters to companies and influencers, reminding the recipients of their legal obligations.

The letters state that consumers need to know if there is a material connection between a company and an influencer who promotes the company's products or services. Unless the connection is otherwise evident from the context, the influencer is required "clearly and conspicuously" disclose the connection.

There are at least four noteworthy aspects to these letters:

- Thus far, the FTC's enforcement efforts have been focused primarily on companies. Some of these letters, though, were sent to celebrities, athletes, and other influencers. This could signal broader enforcement in the future.
- The letters address some issues that are unique to Instagram. Consumers who view Instagram posts on mobile devices typically see only the first three lines of a longer post, unless they click "more." When making endorsements on Instagram, influencers should generally disclose any material connection above the "more" button, so that the disclosure is less likely to be missed.
- The letters also noted that when posts include multiple tags, hashtags, or links, readers may just skip over them, especially when they appear at the end of a long post. It's important to ensure that important disclosures don't get lost in the mix. This might require leading with the important disclosures or making sure that they otherwise stand out.
- Some of the letters addressed particular disclosures that the staff believes are not sufficiently clear. For example, some letters pointed out that consumers may not understand a disclosure like "#sp," "Thanks [Brand]," or "#partner" in an Instagram post to mean that the post is sponsored. Although there's no one-size-fits-all way to make that disclosure, a term that is

subject to multiple interpretations may not be sufficient.

These types of letters are often a precursor to more formal action, so this might be a good time to revisit your influencer agreements and campaigns.