

Influencer Lawsuit Dismissed on Procedural Grounds

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In 2022, Alin Pop was scrolling through his Instagram feed, when he found influencers promoting Luli Fama swimwear. “Pop followed what he believed to be the honest advice of the influencers,” and purchased some products for his spouse. When Pop later realized that the influencers were paid to endorse the products, he felt misled, unsuccessfully tried to return the products, and then filed a lawsuit against the company and various influencers.

The lawsuit, [like others we’ve covered](#), generally alleges that the influencers’ failure to disclose that they were paid to promote the company’s products runs afoul of the FTC’s Endorsement Guides, which require such disclosures, and violates state laws. In this case, the state law at issue is the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), which generally prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

The district court dismissed Pop’s complaint for, among other reasons, failing to comply with Federal Rule of Civil Procedure 9(b). According to the court, because Pop’s FDUTPA claim sounded in fraud, the Rule 9’s particularity requirement—which requires plaintiffs “alleging fraud” to “state with particularity the circumstances constituting fraud”—applied to the claim. Because the complaint failed to allege the facts underlying his claim with the required particularity, the court dismissed the complaint with prejudice.

After review and oral argument,” the 11th Circuit agreed that Rule 9(b)’s particularity requirement applies to FDUTPA claims that sound in fraud and that Pop’s complaint asserted such a claim. They also agreed that Pop failed to allege the facts underlying his claim with the required particularity. The 11th Circuit thus held that the district court correctly dismissed the complaint and, because Pop failed to properly request leave to amend, the district court wasn’t required to give him another chance to plead his claim.

Because the case was dismissed on procedural grounds, the court didn’t address the merits of the case. Although Pop can’t revive his suit against Luli Fama, he still has another chance to vent against influencer campaigns. Earlier this year, Pop filed a [lawsuit](#) against Beach Bunny Swimwear and various influencers, alleging similar facts. Perhaps a decision in that lawsuit (or other similar ones that are pending) will reach the merits of the case.

For now, if you are a company using influencers to promote your products, you should take steps to ensure your influencers disclose their connection to you in a way that complies with the FTC’s Endorsement Guides. Compliance could save you the hassle of a lawsuit. And if you’re a consumer purchasing products based on an influencer’s recommendation, you may want to err on the side of assuming that the influencer is being paid. That could save you the hassle of a lawsuit, too.