

NAD Decision Addresses Content Creators on TikTok

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TikTok offers an affiliate program through which influencers and other content creators can earn commissions by promoting products from various brands through affiliate links in their videos. Marketing experts often caution brands against trying to exercise too much control over this type of content. If a video looks too scripted, it may not reflect the creator's voice or resonate with the creator's audience. Although that may be true, legal experts will likely caution brands that too little control can lead to legal issues. A recent NAD decision illustrates that point.

As part of its routine monitoring process, NAD reviewed TikTok videos posted by a teen influencer in which she promoted the benefits of NuOrganic Eyelash Serum without clearly disclosing her connection to the company. NAD determined that because the influencer receives compensation – whether in the form of money or free products – she should have disclosed that. Although this requirement would apply to any influencer, NAD thought it was especially important here because the influencer's teenage audience might not expect that she had a financial incentive to promote the product.

NAD also questioned some of the claims the influencer made in her videos, including claims that the Serum helps naturally grow eyelashes and is safe for teens. Quoting from the FTC's Endorsement Guides, NAD reminded NuOrganic that endorsements can't include any claims that an advertiser can't support itself. Although NuOrganic noted that it has no control over statements by affiliates on TikTok, NAD held that "NuOrganic must monitor its influencers and take immediate steps to remove noncompliant posts and not repost content with unsupported claims."

Brands using TikTok's affiliate program face a challenge. Although they may not want creator content to appear too scripted, brands need to provide some boundaries to help reduce the likelihood that what creators do (or don't do) can get them in trouble. Those boundaries should include clear instructions on how the creators disclose their relationships to the brand and guidelines on what creators can (and can't) say about the products. Brands will also need to think about how they can monitor creators to ensure they are working within those boundaries.

Be particularly careful when content is directed to kids. In addition to NAD, regulators are also focused on how companies market products to kids on social media. For example, last month, we [posted](#) that the Connecticut AG had sent a letter to Sephora asking for details about how it markets beauty products to kids. The press release stated that the letter was the latest in a series of measures by the AG "to address harm to youth stemming from social media." We expect to see an increased focus in this area across the country in the coming months.