

# NAD Decision Addresses Gifting to Influencers

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Revolve is an e-commerce fashion brand that relies heavily on influencers to promote its products. Some of those influencers promote the products pursuant to agreements with the company, while others promote the products as part of a gifting program through which they receive clothing credits in exchange for social media posts or attending events. Either way, the company says that it instructs influencers to clearly disclose their connections to the company. NAD recently considered whether those instructions were effective in the context of the company's gifting program.

As part of its routine monitoring program, NAD found Instagram posts by two influencers – Georgia Hassarati and Alyssa Nicole Nelson – that tagged Revolve, but didn't clearly explain that the influencers had a connection to the company. Although Revolve promptly asked the two influencers to make the necessary disclosures and took steps to help ensure other influencers do the same, NAD still thought the company fell short of its obligations under the FTC's updated Endorsement Guides. Here's a summary of NAD's concerns and recommendations.

- Revolve revised the Checkout Terms it shows to influencers before they can use gift credits to clarify the disclosure requirements and provide examples. NAD noted that the "Checkout Terms are 12-lines long and do not explain *how* the influencers must comply with relevant guidelines." Without seeing the terms, it's hard to precisely identify NAD's concerns about the content or the length, but it seems that NAD expects companies to include clear instructions about what disclosures to make *and* where to make them.
- Revolve sends an email to influencers with information about the clothing credit and "instructions on how to clearly and conspicuously disclose the gifting relationship they have with Revolve." Although the portion of the instructions included in the decision looks reasonable, NAD was concerned that "they appear in the fifth of seven bullet points of block text which can easily be missed." Again, without seeing the instructions in context, it's hard to identify the exact problem. (Would it have been sufficient to include the disclosures in one of the earlier bullets?) The decision does suggest, though, that companies will need to consider how prominent the instructions are.
- Ms. Hassarati updated her Instagram posts so that the disclosures about her connection to Revolve "appear in the first and second lines of the posts without having to click on a link to expand the post." However, NAD was concerned with the #giftedbyrevolve disclosure. NAD wrote that the disclosure "runs words together and thus makes it difficult for consumers to understand it." Presumably, #GiftedByRevolve would have been better. And a disclosure using a proper sentence – like "I received this as a gift from Revolve" – would be even better than that.

- One of Ms. Nelson's posts included the following disclosure: "Wearing @revolve @loversfriendsla #sponsored." NAD was concerned that tagging multiple brands in that manner "does not make clear that a brand is sponsoring the post or which brand is sponsoring the post." Looking to business guidance from the FTC, NAD suggested that a disclosure like "Sponsored by @revolve" would have been more effective in communicating which company had sponsored the post.

If you work with influencers, this decision is worth close consideration. Although it's hard to precisely identify the details of some of NAD's concerns, it's certainly easy to identify the key themes. NAD expects companies to provide influencers with instructions about what disclosures to make and where to make them. The disclosure language should be designed to ensure consumers have no doubt about the nature of the relationship. And the instructions should be presented in a way that influencers are clearly aware of their obligations.

*Update: NAD also contacted agencies that represent Hassarati and Nelson to inquire what steps the agencies take "to ensure consumers understand that the content they are viewing is advertising," but administratively closed those cases after learning that the agencies weren't involved in the posts at issue.*