

# NAD Finds Advertiser Responsible for Influencer Post it Didn't Request

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May 18, 2025

A beauty influencer posted a video on TikTok that purported to show how Huda Beauty's Easy Bake Setting Spray is stronger and lasts longer than Charlotte Tilbury Beauty's competing spray. Huda reposted the video on its Instagram account. Although the influencer doesn't have a formal relationship with Huda and wasn't required to post the video, she does periodically receive free products from the company.

For reasons that aren't entirely clear, Charlotte sent Huda a letter asking the company to take the video down. Huda took it down from its Instagram account and the company's founder added the following comment to the video on the influencer's TikTok account: "Thank you for your review!! We had to take the video down bc Charlotte made us."

NAD noted that although Huda hadn't asked the influencer to post the video, the founder's comment "suggested that [Huda] approved the content and is therefore responsible for the truthfulness [of] the claims made in the video." Presumably, Huda may not have been able to substantiate some of the claims, so NAD appreciated that it had taken the video down from its own Instagram account.

Charlotte argued that Huda should be responsible for removing the influencer's TikTok video. Huda disagreed, noting that the company doesn't have a contract with the influencer, it wasn't involved in the video, and it didn't compensate the influencer for it. Although Huda acknowledged it had sent the influencer free products, it argued that it didn't have any obligation or authority to remove the video.

"NAD has found that when an advertiser and an influencer share a longstanding, albeit informal, relationship (including the provision of free product) and the advertiser has been put on notice that the influencer's claims may be unsupported, certain additional remedial action may be required on the part of the Advertiser." Accordingly, NAD asked Huda to "make a good faith attempt" to get the influencer to take down the video.

Although the challenge focused on the claims in the video, a footnote in the decision suggests that the influencer may not have adequately disclosed that she had received free products from Huda. NAD noted that the Endorsement Guides "provide that an advertiser should ask any influencers to whom it sends free products to clearly and conspicuously disclose the material connection" in a post.

This decision is a reminder that companies may be responsible for claims that influencers make, even if they don't have formal agreements with the influencers. If a company sends free products to an influencer, it may be responsible for the influencer's posts. Moreover, if a company comments on an influencer's post in a way that suggests it approves any claims in the post, it may also be

responsible for those claims.