

NAD Reviews More Influencer Posts

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As part of its on-going monitoring of influencer campaigns, NAD recently launched an inquiry to assess whether influencers Brittany Mahomes and Lana Del Rey had adequately disclosed their relationship to Skims Body – a fashion brand that specializes in underwear and loungewear – in various Instagram posts.

Skims advised NAD that it contractually requires its influencers to comply with the FTC's Endorsement Guides, that it instructs them to disclose their connections, and that it monitors compliance and contacts influencers when it finds problems. Despite these efforts, some posts didn't include the required disclosures.

Skims also argued that because some posts didn't mention Skims in the post copy and didn't identify the brand, the posts wouldn't be seen as endorsements. NAD noted that although the posts didn't mention Skims in the captions, the brand was tagged in the images, which qualifies them as endorsements under the Endorsement Guides.

Skims also argued that because the posts were highly stylized fashion shoots, viewers would assume they were part of a paid sponsorship, such that a disclosure wasn't necessary. NAD didn't agree, noting that the images, while polished, didn't inherently signal sponsorship. Therefore, the influencers should have included a disclosure.

This is NAD's third decision on influencer campaigns in as many months. Each decision demonstrates that NAD is taking a very strict approach to the Endorsement Guides, including when the Guides apply, how disclosures should be made, and how viewers are likely to interpret posts. Companies may want to take a similarly strict approach to avoid NAD scrutiny.