

# FTC Warns Influencers: Disclose Material Connections

NP [bbbprograms.org/media-center/bd/insights/2023/11/20/ftc-warning-influencers](https://bbbprograms.org/media-center/bd/insights/2023/11/20/ftc-warning-influencers)

Blog Post

## FTC Warns Influencers:

## Disclose Material Connections



National Programs

National Advertising Division



Earlier this year the Federal Trade Commission (FTC) revised its Guides for Endorsements and Testimonials and issued a guidance document answering questions about the Guides, as well as a proposed new rule on the use of consumer reviews and testimonials - almost promising businesses that the FTC would be taking a close look at influencer marketing.

Last week, the FTC made good on that promise, sending warning letters to two trade associations and a dozen health influencers warning them about the lack of adequate disclosures in their social media posts.

The warning letters were sent to the American Beverage Association (AmeriBev) and The Canadian Sugar Institute, as well as twelve registered dietitians. The letters expressed concerns that the trade groups and individual influencers may have violated the FTC Act by failing to adequately disclose in TikTok and Instagram posts that the influencers were hired to promote the safety of aspartame or the consumption of sugar-containing products.

The FTC's warning letters are a timely reminder to review your business practices when using paid influencer marketing to ensure you are on the right side of FTC truth-in-advertising principles.

## The Guardrails for Paid Influencer Marketing

---

Endorsements by influencers, a style of marketing that enables businesses to collaborate with individuals who have a social media following for increased brand exposure, are an important tool for businesses and persuasive to consumers.

The approach is straight forward. A brand pays an influencer who has a large social media audience that matches their product or service demographic to publish social media content that promotes their product or service. Also relatively straight forward are the FTC's truth-in-advertising principles, which require that such a relationship (i.e. a material connection that may affect the weight or credibility that consumers give the endorsement) be clearly and conspicuously disclosed to consumers.

This is something the National Advertising Division (NAD) sees often. Here are a handful of cases that involve this same issue and provide valuable guidance on the proper use of paid influencer marketing:

- Goose Creek Candles, LLC, Case #7237 (October 2023)
- Renue by Science, LLC, Case #7188 (May 2023)
- Goli Nutrition, Inc., Case #7059 (April 2022)
- The Coldest Water, LLC, Case #7023 (October 2021)
- Safe Catch, Inc., Case #6911 (July 2021)
- VGH Solutions, Inc., Case #6404 (September 2020)
- P&G (Bounty Paper Towels), Case #6403 (August 2020)

Last week's FTC warning letters also provide useful guidance on how to truthfully disclose a material connection between an influencer and business and the updated Guides provide additional issues to consider when using endorsements as marketing tools. As collaborations between brands and influencers continue to grow, businesses should consider the following guardrails when engaging with paid influencers.

Clearly and conspicuously disclose any relationship between the influencer and the advertiser.

- If there is a material connection between an influencer and advertiser that may affect the weight or credibility that consumers give the endorsement, that connection should be clearly and conspicuously disclosed. A material connection can consist of a business relationship, a family relationship, monetary payment or giving free product to the influencer.

- Under the FTC’s updated guidance, clear and conspicuous means that material connection disclosures must be difficult to miss and easily understandable by consumers. The FTC warning letters make clear that if the endorsement of the advertiser’s product or service is made in video and audio then the disclosure must appear in both video and audio as well.
- Beware of the placement of the material connection disclosure in the social media post’s text description. The FTC explained that the text description on TikTok and Instagram posts is often truncated with only the first few lines displayed unless viewers click to expand the description, and it is in small print at the bottom of the screen and doesn’t stand out.
- Do not rely solely on the social media platform’s built-in disclosure tools. The FTC’s updated guidance makes clear it does not consider these disclosures, when used on their own, to be clear and conspicuous. The FTC’s warning letters point to the “Paid partnership” disclosure tools on TikTok and Instagram as insufficient and explains that it is “too easy for viewers to miss” but that the tools could be used “in addition to other disclosures.”
- Ensure the material connection disclosures clearly identify the sponsor of the ad. The FTC acknowledged in the warning letters that the disclosures “#paid partnership,” “#ad,” “#sponsored,” “#safetyofaspartame,” or “ameribev” may not adequately identify the sponsor of the influencer post as viewers might not understand that the sponsor of the post is promoting the sale of aspartame or products containing aspartame.

While the FTC’s recent warning letters only look at the sufficiency of the influencers’ disclosures, it is important to remember a few other rules of the road for influencer marketing:

**Influencer endorsements should be honest and truthful.**

Only engage with influencers who have experience with your product or service. All endorsements should reflect the honest opinions, findings, and/or experience of the endorser.

**Influencer endorsement should not convey claims that the advertiser cannot substantiate.**

An advertiser is responsible for statements made by their endorser. Ensure influencers you engage know what types of claims the business can substantiate.

**The influencer’s experience should represent the typical customer experience.**

Be careful when using endorsements that do not reflect the typical consumer experience. Consumers may interpret the endorsement to mean that others can expect the result touted. Statements like “results not typical” or “individual results may vary” are not enough to tell consumers you are featuring exceptional results. The advertiser can clearly and conspicuously disclose the generally expected performance of the product or service in the circumstances shown in the ad.

## **Avoid the Fines: Follow the Rules**

---

One last important point – both businesses and individual influencers can be held liable for violating the FTC Act and violations can cost a pretty penny. The FTC’s warning letters cautioned that the trade associations and influencers may be liable for up to \$50,000 per violation in civil penalties. The most recent warning letters send a clear message to the advertising community: the FTC will be looking carefully at the use of paid influencer marketing in the year ahead.

Following the FTC’s rules of the road is more important now than ever before.