

BRANDS' LEGAL OBLIGATIONS WHEN USING INFLUENCERS

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Introduction



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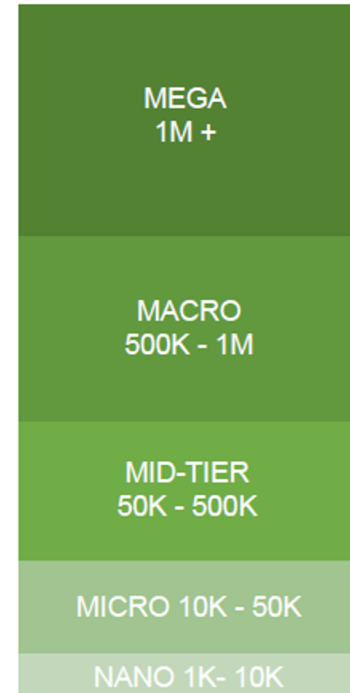
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Due Diligence

Before hiring an influencer to represent your brand, do the research to help protect your company from future liability.

- **Evaluate an influencer's legitimacy**
 - Follower count
 - Post frequency
 - Engagement rate
- **Social Audit Pro, IG Audit**
- **Estimated that fake followers could cost brands [\\$1.3B](#) in 2019**
- **Review for legal compliance**

Instagram Influencer Tiers



Influencer Requirements



- **Anyone making an “endorsement” must disclose their “material connection” to the brand**
 - Includes receiving free products
- **Disclosures must be “clear and conspicuous”**
 - Immediately understandable
 - Hard to miss
- **Influencers must be truthful & honest**
- **Influencers cannot say anything the brand itself cannot say**
 - i.e., false or unsubstantiated claims

Brand Obligations

Keeping an eye on your influencers' content is a good idea, but did you know that you are legally obligated to monitor it and take action when necessary?

- **For contracted posts, brands should review promptly after publication**
- **The FTC has allowed varying monitoring obligations based on the monetary value**
 - For influencers receiving only low-value free products (e.g., less than \$20/month), brand monitoring obligations could be less stringent
- **Be prepared to terminate relationships**



Get It In Writing



- **Have written brand policies**
- **Keep records of all training (of influencers and staff), monitoring, enforcement, etc.**
- **Protect the brand contractually, including by:**
 - Requiring compliance with laws, FTC guidance, and brand policies
 - Including clear remedies for violations
 - Addressing ownership of posts and rights to use the post (and the influencer's name/likeness) for other purposes

Resources

FTC: Disclosures 101 for Social Media Influencers

FTC: Endorsements Guide

The FTC's Endorsement Guides: What People Are Asking

FTC: The Do's and Don'ts for Social Media Influencers

FTC: Advice for Social Media Influencers

ANY QUESTIONS?

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