

## BizTech Law Blog

# #Sponsored: What Social Media Influencers Need to Know to Remain Compliant with the FTC

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Influencer marketing on social media is a very big business. Here's how it works: brands team up with individuals with large and engaged followings on social media platforms such as YouTube, Facebook and Instagram (i.e., "influencers"), and pay them to promote their products.

*Forbes* reports that top YouTube influencers can earn as much as \$300,000 per campaign, and Facebook and Instagram influencers command from \$187,000 and \$150,000 per campaign, respectively. According to *Adweek*, marketers are doubling their investment in influencer marketing this year, with Instagram influencers alone accounting for more than \$1 billion of marketing budgets.

With so much money at stake, it's no surprise that the Federal Trade Commission is taking a much closer look at social media influencer activity online. Last month, the FTC disclosed that it settled its first-ever complaint against individual social media influencers.

In this action, the FTC targeted two social media influencers with large followings in the online gaming community. They settled allegations brought by the FTC that they deceptively endorsed an online gambling service called CSGO Lotto, while failing to disclose their joint ownership of the company. They also allegedly paid other influencers to promote the company without requiring them to disclose that they were being paid to do so.

The FTC also reported that it recently sent warning letters to 21 other social media influencers. The letters, in part, described the FTC's Endorsement Guidelines:

The FTC's Endorsement Guidelines state that if there is a "material connection" between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Material connections could consist of a business or family relationship, monetary payment, or the provision of free products to the endorser.

The guidelines governing the endorsement of products and services on social media are emerging and evolving. We are in the infancy of a new multi-billion dollar online industry, and the FTC is trying to keep up by crafting policy and regulations that balance the interests of brands and influencers, while protecting the public. In addition to disclosing the fact that a settlement was reached in connection with the first-ever complaint brought against social media influencers in its recent news release, the FTC provided "Do's and Don'ts" for other social media influencers to follow. These include:

1. **Do** clearly disclose when you have a family or financial relationship with a brand. **Don't** assume followers know about all of your brand relationships.

2. **Do** ensure your sponsorship disclosure is hard to miss. **Don't** assume disclosures built into social media platforms are sufficient.
3. **Do** treat sponsored tags, including tags in pictures, like any other endorsement. **Don't** use ambiguous disclosures like "Thanks," #collab, #sp, #spon, or #ambassador.
4. **Do** superimpose disclosures over images on image-only platforms like Snapchat. **Don't** rely on disclosures that people will see only if they click "more."

The bottom-line: When it comes to social media influencer disclosures, **the more clear and prominent the disclosure, the better.**

If you have any questions about these issues, or would like to learn more, please contact a Foster Swift Business & Tax attorney.