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ADVISING 101 FOR THE GROWING FIELD OF SOCIAL MEDIA INFLUENCERS

Stasia Skalbania*

Abstract: The Federal Trade Commission (FTC) protects consumers from unfair and deceptive business practices. In 2019, the FTC released the “Disclosures 101 for Social Media Influencers Guide” (herein referred to as the “2019 Influencer Guide”). The 2019 Influencer Guide outlines advertisers’ and endorsers’ specific responsibilities relating to the advertising and marketing of products on social media platforms. Despite the extensive information provided within the 2019 Influencer Guide, there is still great confusion regarding endorsement disclosure requirements, and many brands and influencers are not in compliance with FTC recommendations. This Comment provides guidance to brands and social media influencers on how to properly disclose brand endorsements in compliance with the FTC’s developing guidelines and avoid enforcement action.

INTRODUCTION

The rise in popularity and influence of social media applications has been meteoric, resulting in an immense wave of regulatory issues for brands and influencers.¹ Facebook launched in 2004,² YouTube in 2005,³

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1. See Megan K. Bannigan & Beth Shane, *Towards Truth in Influencing: Risks and Rewards of Disclosing Influencer Marketing in the Fashion Industry*, 64 N.Y.L. SCH. L. REV. 247, 248–50 (2020); see also *infra* section III.A–.B.

2. Nicholas Carlson, *At Last—The Full Story of How Facebook Was Founded*, BUS. INSIDER (Mar. 5, 2010, 1:10 AM), <https://www.businessinsider.com/how-facebook-was-founded-2010-3> [<https://perma.cc/W9Z2-RHVT>]. Facebook is a free social media platform that “helps you connect with friends, family and communities of people who share your interests.” *Facebook*, META, <https://about.facebook.com/technologies/facebook-app/> [<https://perma.cc/282Z-GJSB>].

3. William L. Hosch, *YouTube*, BRITANNICA (Mar. 2, 2022), <https://www.britannica.com/topic/YouTube> [<https://perma.cc/H9F4-QJ2B>]. YouTube is a video sharing website. *Id.*

Instagram in 2010,⁴ Snapchat in 2011,⁵ and TikTok in 2018.⁶ In less than two decades since the launch of social media, they have collectively amassed over 4.48 billion users, which is 56.8% of the world's population.⁷ As the popularity of social media increases, regulatory agencies such as the Federal Trade Commission (FTC) struggle to implement effective regulations.⁸

One major responsibility of the FTC is to protect consumers from unfair or deceptive business practices.⁹ This includes brand endorsements by social media influencers.¹⁰ The FTC reported that companies spent more than \$8 billion in social media advertising in 2019 and are projected to spend \$15 billion in 2022.¹¹ The FTC has made numerous attempts to provide guidance to these social media influencers.¹² However, many are

4. Raisa Bruner, *A Brief History of Instagram's Fateful First Day*, TIME (July 16, 2016, 6:44 AM), <https://time.com/4408374/instagram-anniversary/> [<https://perma.cc/2CA8-LGA8>]. "Instagram is a free social media platform for sharing photos and videos." William Antonelli, *A Beginner's Guide to Instagram, the Wildly Popular Photo-Sharing App with over a Billion Users*, BUS. INSIDER (Dec. 14, 2020, 9:14 AM), <https://www.businessinsider.com/what-is-instagram-how-to-use-guide> [<https://perma.cc/BY29-JEEP>].

5. Biz Carson, *The Rise of Snapchat from a Sexting App by Stanford Frat Bros to a \$3 Billion IPO*, BUS. INSIDER (Feb. 5, 2017, 5:30 AM), <https://www.businessinsider.com/the-rise-of-snapchat-from-a-stanford-frat-house-to-a-3-billion-ipo-2017-1> [<https://perma.cc/P4FM-SPJ8>]. Snapchat is a free social media platform that allows users to share disappearing photos, messages, and videos. Tiffany Peón, *A Guide to Snapchat for People Who Don't Get Snapchat*, N.Y. TIMES (Feb. 7, 2018), <https://www.nytimes.com/2018/02/07/smarter-living/snapchat-guide.html> [<https://perma.cc/T3AQ-CBQ2>].

6. Rita Liao & Catherine Shu, *TikTok's Epic Rise and Stumble*, TECHCRUNCH (Nov. 26, 2020, 1:11 AM), <https://techcrunch.com/2020/11/26/tiktok-timeline/> [<https://perma.cc/G7TG-NAVVP>] (TikTok was launched in 2016 in China, but it merged with Musical.ly and launched in the United States in 2018). "TikTok is an app for making and sharing short videos." John Herrman, *How TikTok Is Rewriting the World*, N.Y. TIMES (Mar. 10, 2019), <https://www.nytimes.com/2019/03/10/style/what-is-tik-tok.html> [<https://perma.cc/VL8M-QZU5>].

7. Werner Geysler, *Social Media Marketing Benchmark Report 2022*, INFLUENCER MKTG. HUB (Feb. 4, 2022), <https://influencermarketinghub.com/social-media-marketing-benchmark-report/> [<https://perma.cc/4CNW-ZSUP>]. These numbers were accurate as of July 2021. *Id.*

8. See Press Release, Rohit Chopra, Commissioner, Fed. Trade Comm'n, Public Statement Regarding the Endorsement Guides Review (Feb. 12, 2020) [hereinafter Statement of Commissioner Chopra], https://www.ftc.gov/system/files/documents/public_statements/1566445/p204500_-_endorsement_guides_reg_review_-_chopra_stmt.pdf [<https://perma.cc/4ZKW-4NPS>].

9. *About the FTC*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc> [<https://perma.cc/LW82-FCQ4>].

10. See FED. TRADE COMM'N, DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS (2019) [hereinafter *Disclosures 101 for Social Media Influencers*], https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf [<https://perma.cc/384L-DVT2>]. "Social media influencers" are people with extensive social media followings who share content that influences the purchasing decisions of other social media users. See *infra* section I.A.

11. Statement of Commissioner Chopra, *supra* note 8.

12. See, e.g., *Disclosures 101 for Social Media Influencers*, *supra* note 10; Press Release, Fed.

still confused about what disclosures are required, and, as a result, many social media influencers are not in compliance with FTC requirements.¹³

This Comment provides guidance for brands and social media influencers on how to disclose brand endorsements in compliance with the FTC’s developing guidelines and avoid enforcement action. Part I defines the term “social media influencer” and provides an overview of the influencer industry. Part II describes the structure of the FTC and its enforcement power against misleading advertisements. Part III addresses the FTC’s history of regulation and enforcement in the influencer industry specifically. Part IV addresses the FTC’s recent request for comments regarding revisions to its enforcement guides. Lastly, Part V makes recommendations for how attorneys should advise clients to properly comply with the FTC Endorsement Guides as they stand today.

I. AN OVERVIEW OF THE INFLUENCER INDUSTRY

Social media influencers are a relatively new phenomenon, but they have had an incredible impact on marketing strategies, consumer protection law, and society generally. This Part describes what an influencer is and the scope of influencer marketing.

A. *What Is an Influencer?*

Social media influencers are people with extensive social media followings who share content on Instagram, TikTok, Twitter, Facebook, and other social media applications.¹⁴ The path to becoming an influencer can differ, but influencers generally focus on one or two social media platforms and post content in one chosen interest area.¹⁵ The content that

Trade Comm’n, *Lord & Taylor Settles FTC Charges It Deceived Consumers Through Paid Article in an Online Fashion Magazine and Paid Instagram Posts by 50 “Fashion Influencers”* (Mar. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/lord-taylor-settles-ftc-charges-it-deceived-consumers-through> [<https://perma.cc/6YFP-SGH4>]; *see also infra* section III.A–B.

13. *See infra* section III.C; *see, e.g.*, Aicha Tohry, *Lessons from Susan Yara’s Naturium Launch Gone Wrong*, BETTERMARKETING (June 26, 2020), <https://bettermarketing.pub/what-influencers-can-learn-from-susan-yaras-naturium-skincare-launch-73d2319c9ddb> [<https://perma.cc/L98W-W84C>]; *Savage X Fenty Deceptive Influencer Marketing Database*, TRUTH IN ADVERT., <https://www.truthinadvertising.org/savagexfenty-deceptive-influencer-marketing-database/> [<https://perma.cc/NBY7-B5SS>].

14. *See It’s Been a Minute, ‘The New Celebrity’: The Rise of Influencers—and How They Changed Advertising*, NPR, at 01:53, 10:20 (Sept. 10, 2019), <https://www.npr.org/transcripts/759127302> [<https://perma.cc/6DYF-2QXL>] (discussing the rising trend of influencer marketing and introducing examples of influencers and influencer managers).

15. Werner Geysler, *How to Become an Influencer: 7 Easy Steps to Becoming a Social Media Influencer Today*, INFLUENCER MKTG. HUB (Apr. 21, 2021),

influencers post varies. Influencers share content about the clothes they wear,¹⁶ the food they eat,¹⁷ and home decorating projects,¹⁸ among other subject matter. Regardless of what type of content they share, all influencers have the power to affect the purchasing decisions of other social media users based on the influencer's knowledge, authority, position, or relationship to their audience.¹⁹

Influencers receive money from brands to promote various products to their followers.²⁰ An influencer's ability to earn money from promotions correlates with their number of followers.²¹ Thus, influencers can be described based on their number of followers using four categories: nano influencers, micro influencers, macro influencers, and mega—often celebrity—influencers.²²

At one end of the spectrum are nano influencers, who have the smallest number of followers among influencers—typically between 1,000 to 10,000 people.²³ While their followings are small, nano influencers' followers are typically more engaged with the influencer and are therefore more driven to purchase from the endorsed brands.²⁴ Nano influencers may receive free products from brands in exchange for creating a post or series of posts promoting a brand's content, or may receive between twenty-five and a few hundred dollars in payment, depending on how much sponsored content they agree to provide.²⁵

One example of a nano influencer is Jen Lauren, a part-time fitness and

<https://influencermarketinghub.com/how-to-become-an-influencer/> [<https://perma.cc/H27Z-DTLA>]. “Posts” are writings, photos, messages, or other items of content that social media users share on their social media profiles. *Post*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/post> [<https://perma.cc/6D4Z-XJYU>].

16. *See, e.g.*, Chiara Ferragni (@chiaraferragni), INSTAGRAM, <https://www.instagram.com/chiaraferragni/> (last visited Apr. 26, 2022) (showing latest fashion trends).

17. *See, e.g.*, Rosanna Pansino (@rosannapansino), INSTAGRAM, <https://www.instagram.com/rosannapansino/> (last visited Apr. 26, 2022) (showing videos, photos, and recipes of baked goods).

18. *See, e.g.*, Nick Olsen (@nickolsenstyle), INSTAGRAM, <https://www.instagram.com/nickolsenstyle/> (last visited Apr. 26, 2022) (showing interior design projects).

19. Werner Geysler, *What Is an Influencer?—Social Media Influencers Defined*, INFLUENCER MKTG. HUB (Apr. 4, 2022), <https://influencermarketinghub.com/what-is-an-influencer/> [<https://perma.cc/QS5Y-RT37>].

20. “Followers” are a social media user's audience for their account. They are fellow social media users that watch, view, or read an influencer's content. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*; Hal Koss, *Nano-Influencers: Marketing's Not-so-Secret Weapon*, BUILT IN (Nov. 5, 2021), <https://builtin.com/marketing/nano-influencer> [<https://perma.cc/W8T4-BE5B>].

24. *See* Gregory A. Nysten, *Social Media Influencers as Endorsers: Pitfalls and Best Practices to Avoid the Ire of the FTC*, ORANGE CNTY. LAW., Apr. 2020, at 37, 37.

25. *See* Koss, *supra* note 23 (discussing the social media practices of nano influencers Laur DeMartino and Troy Burrows).

lifestyle influencer.²⁶ She began her path as an influencer by reviewing workout classes in New York City.²⁷ As of February 2022, Lauren had 4,217 followers on Instagram.²⁸ She often reaches out directly to brands she wants to collaborate with.²⁹ For a sponsored post on Instagram, she charges brands about \$350.³⁰ She has endorsed brands such as Lane Eight (a shoe brand),³¹ LesserEvil Snacks (a snack company),³² and Sakara Life (a wellness food brand).³³

Micro influencers are also smaller-scale influencers, but typically have between 10,000 and 40,000 followers.³⁴ Micro influencers often earn a few hundred dollars for posts.³⁵ One example of a social media micro influencer is Janea Brown,³⁶ a lifestyle content creator³⁷ and home design influencer.³⁸ Social media influencing is a part-time job for her; she also works as a nanny.³⁹ Brown primarily works with brands that focus on her

26. See Jen Lauren (@jen_laurenn), INSTAGRAM, https://www.instagram.com/jen_laurenn/ (last visited Apr. 10, 2022); Sydney Bradley, *How Instagram Nano Influencers Make Money with Under 10,000 Followers*, BUS. INSIDER (Dec. 21, 2021, 8:00 AM), <https://www.businessinsider.com/how-to-make-money-instagram-under-10-thousand-followers-nano-2021-6> [<https://perma.cc/5MAG-WTLB>].

27. Shameyka McCalman, *Nano-Influencer Jen Lauren Creates a Small but Mighty Online Fitness Community*, TILT (Nov. 1, 2021), <https://www.thetilt.com/content-entrepreneur/nano-influencer-jen-lauren> [<https://perma.cc/F3RM-YNAR>].

28. See Lauren, *supra* note 26.

29. See McCalman, *supra* note 27.

30. Bradley, *supra* note 26.

31. See Jen Lauren (@jen_laurenn), INSTAGRAM (Aug. 26, 2021), <https://www.instagram.com/p/CTCu4pGLNEy/> (last visited Apr. 21, 2022).

32. See Jen Lauren (@jen_laurenn), INSTAGRAM (July 14, 2021), <https://www.instagram.com/p/CRUBz6oFRuB/> (last visited Apr. 21, 2022).

33. See Jen Lauren (@jen_laurenn), INSTAGRAM (July 26, 2021), <https://www.instagram.com/p/CRywzsvp0ZV/> (last visited Apr. 21, 2022). See generally Lauren, *supra* note 26.

34. See *It's Been a Minute*, *supra* note 14, at 7:24. But see Geyser, *supra* note 19 (stating that nano influencers generally have less than 1,000 followers. This, however, contradicts other sources. Additionally, the article does not state what influencers who have between 1,000 and 10,000 followers are called. Therefore, the author has chosen to use other sources' definition of "nano influencer.").

35. See *It's Been a Minute*, *supra* note 14, at 07:38.

36. Janea Brown (@jnydaily), INSTAGRAM, <https://www.instagram.com/jnydaily/?hl=en> (last visited Apr. 26, 2022).

37. Janea defines "lifestyle content" as content for mostly women that inspires them to create healthy and happy homes and lifestyles that they're seeking. *It's Been a Minute*, *supra* note 14, at 10:57. She also encourages more women to "do what they need to do to live the life that they want to live." *Id.* at 11:01.

38. *Id.* at 10:57.

39. *Id.* at 10:55. Influencers must build enough content to gain the attention of brands, and this can take significant time. Therefore, it often takes years for someone to be able to support themselves financially entirely through influencing. Peter Suci, *Is Being a Social Media Influencer a Real Career?*, FORBES (Feb. 14, 2020, 7:00 AM), <https://www.forbes.com/sites/petersuciu/2020/02/14/is-being-a-social-media-influencer-a-real-career/> [<https://perma.cc/HMH6-SXQ9>].

followers' interests, which are wellness, home interior design, and houseplant care.⁴⁰ When Brown agrees to work with a brand, she typically negotiates a contract with the brand, brainstorms ideas for posts, and then proposes the posts to the brand for approval.⁴¹ She shops for props and either hires a photographer, asks a friend, or takes the photographs herself.⁴² It often takes about eight hours for Brown to create a post.⁴³ Brown said that her compensation was not yet enough for her to work as an influencer full time, but she felt that it could eventually turn into a full-time job.⁴⁴

Macro influencers generally have between 40,000 and 1,000,000 followers.⁴⁵ They are often less popular celebrities or online experts who have been able to build significant followings.⁴⁶ Alexa Collins is one example of a macro influencer.⁴⁷ She works full time as a social media influencer and has a following of about 1.2 million people.⁴⁸ Collins works with a talent agency to secure deals with brands.⁴⁹ She also pitches to brands directly using a portfolio of her past work to promote herself.⁵⁰ She generally charges \$1,500 for a brand endorsement on Instagram and \$500 for a brand endorsement on TikTok.⁵¹

Celebrity influencers generally have over one million followers.⁵² Take, for example, Addison Rae Easterling, known simply as "Addison Rae."⁵³ As of August 2021, Addison Rae makes approximately \$5 million

40. It's Been a Minute, *supra* note 14, at 13:04.

41. *See id.* at 14:36.

42. *Id.* at 14:52, 15:39.

43. *Id.* at 15:39.

44. This information is from a 2019 interview of Janea Brown. *Id.* at 13:04. Since then, Janea Brown has transitioned to be a full-time home interiors and lifestyle influencer, and as of April 10, 2022, had 205,000 Instagram followers. *See* Brown, *supra* note 36 (showing Brown's Instagram followers); *see also* Janea Brown, LINKEDIN, <https://www.linkedin.com/in/jnaydaily/> (last visited Apr. 10, 2022) (showing Brown's career history).

45. Geysler, *supra* note 19.

46. *Id.*

47. Dan Whateley, *How Much Money an Instagram Influencer with 1 Million Followers Charges for Sponsored Content and the 8-Page Media Kit She Uses*, BUS. INSIDER (Dec. 1, 2020, 5:29 AM), <https://www.businessinsider.com/instagram-influencer-shares-media-kit-pay-rates-1-million-followers-2020-11?r=instagram-influencer-lp#collins-finishes-her-media-kit-with-a-series-of-full-page-photos-6> [<https://perma.cc/U263-C4XN>].

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Geysler, *supra* note 19.

53. *See* Addison Rae (@addisonrae), INSTAGRAM, <https://www.instagram.com/addisonrae/> (last

a year combined from her TikTok, Instagram, YouTube, and Twitter posts.⁵⁴ Addison Rae made her first TikTok in July 2019, and by October 2019 she had amassed one million followers.⁵⁵ Two years later, Addison Rae had 82.4 million followers on TikTok, making her one of the most followed accounts on TikTok.⁵⁶ Addison Rae is typically paid between \$21,923 and \$36,538 per post.⁵⁷ However celebrity influencers can get paid even more, often upwards of \$250,000 per post.⁵⁸ Addison Rae now has branded merchandise with Reebok fashion and Daniel Wellington watches, and is the main global spokesperson for American Eagle clothing.⁵⁹

Each social media influencer's following, content, and endorsements are unique. As a result, complying with the applicable laws and regulations as an influencer can be tricky. It can also be challenging for a brand to manage its relationships with influencers. As the following section explains, social media influencers and brands often look to marketing companies for assistance in forging these relationships and managing promotional materials.

B. *Influencer Marketing*

Influencer marketing is a rapidly growing industry. This section provides an overview of the influencer industry and some of the issues that it faces. In 2020, marketers⁶⁰ spent \$9.7 billion on influencer

visited Apr. 21, 2022); Addison Rae (@addisonre), TIKTOK, <https://www.tiktok.com/@addisonre> (last visited Apr. 21, 2022).

54. Abram Brown, *TikTok's 7 Highest-Earning Stars: New Forbes List Led by Teen Queens Addison Rae and Charli D'Amelio*, FORBES (Aug. 6, 2020, 6:30 AM), <https://www.forbes.com/sites/abrambrown/2020/08/06/tiktoks-highest-earning-stars-teen-queens-addison-rae-and-charli-damelio-rule/?sh=1ef4b0445087> [<https://perma.cc/EFR8-GVD4>].

55. Palmer Haasch, *How Addison Rae's Career Went from Casual TikTok Dances to Appearances on 'Keeping Up with the Kardashians'*, INSIDER (July 13, 2021, 12:24 PM), <https://www.insider.com/who-is-addison-rae-tiktok-dance-kardashian-controversy-2021-7#rae-began-posting-on-tiktok-in-2019-2> [<https://perma.cc/MFD8-7322>].

56. Annie Gaus, *TikTok's Highest Paid Influencers*, THESTREET (May 12, 2020, 11:07 AM), <https://www.thestreet.com/investing/highest-paid-tiktok-influencers> [<https://perma.cc/6GEW-NZNM>]; Soo Kim, *From Addison Rae to Charli D'Amelio, Here's How Much Top TikTokers Earn*, NEWSWEEK (Aug. 11, 2021, 12:30 PM), <https://www.newsweek.com/tiktok-stars-how-much-influencers-make-earnings-1618387> [<https://perma.cc/LW9Q-GGLQ>].

57. Gaus, *supra* note 56; *see also* Kim, *supra* note 56.

58. It's Been a Minute, *supra* note 14, at 8:31.

59. Brown, *supra* note 54.

60. "Marketers" include marketing agencies, brands, and other professionals; they are responsible for developing and executing strategies to promote brands, products, and services. *See* Geysler, *supra* note 7.

marketing.⁶¹ In 2021, marketers spent \$10.24 billion on the influencer industry, and that number is expected to grow to \$84.89 billion by 2028.⁶² Influencer marketing, and especially nano influencer marketing, is successful because brands can advertise directly to a target audience.⁶³ Consumers⁶⁴ often trust influencer advertising over other forms of advertising because the words of influencers seem like genuine advice from a friend.⁶⁵ Consumers engage with these influencers on a daily basis and place considerable trust in their endorsements.⁶⁶ Studies show that consumers develop relationships with the influencers they follow and that the social dynamics of their relationship can resemble a friendship.⁶⁷

In one instance, Clean & Clear's acne treatment sales increased by 19% due to a nano influencer campaign.⁶⁸ Additionally, Facebook's CEO explained, in reference to Facebook sponsored Stories,⁶⁹ that "[n]othing influences people more than a recommendation from a trusted friend' and that '[a] trusted referral is the Holy Grail of advertising.'"⁷⁰

For an influencer to endorse a product, influencers and brands must first connect with each other. This happens in a couple ways. Brands might reach out to influencers directly, offering free products or money in exchange for endorsement of their brand.⁷¹ Or, influencers might reach out to a brand that they hope to endorse.⁷²

61. *Id.*

62. Jacinda Santora, *18 Influencer Marketing Trends to Watch in 2022*, INFLUENCER MKTG. HUB (Mar. 2, 2022), <https://influencermarketinghub.com/influencer-marketing-trends/> [https://perma.cc/X9NG-KFAZ].

63. Joel Mathew, *Understanding Influencer Marketing and Why It Is So Effective*, FORBES (July 30, 2018, 8:00 AM), <https://www.forbes.com/sites/theyec/2018/07/30/understanding-influencer-marketing-and-why-it-is-so-effective/?sh=71fab8f371a9> [https://perma.cc/JAN4-22FQ].

64. A "consumer" is a buyer of "any consumer product." 15 U.S.C. § 2301(3). The term is not limited to social media followers, but this is the context in which consumers are discussed in this Comment.

65. Bannigan & Shane, *supra* note 1, at 249.

66. Mathew, *supra* note 63.

67. *See* Bannigan & Shane, *supra* note 1, at 249.

68. *From Fans to Nano Influencers, a Look at the Evolution of Influencer Marketing*, FASHION L. (Feb. 8, 2019), <https://www.thefashionlaw.com/fans-and-micro-micro-influencers-the-answer-to-growing/> [https://perma.cc/EG8F-QJ9P].

69. Facebook Stories are "fullscreen, short-form, ephemeral and offer all sorts of creative, customizable overlays, which means more ways to be authentic and less pressure to be perfect." *Facebook Stories: An Introduction for Content Creators*, FACEBOOK, <https://www.facebook.com/business/learn/lessons/facebook-stories-creators> [https://perma.cc/96VQ-PT4Q]. All content posted to Stories only lasts twenty-four hours. *Id.*

70. *Fraleley v. Facebook, Inc.*, 830 F. Supp. 2d 785, 792 (N.D. Cal. 2011) (quoting Second Amended Complaint ¶ 43, *Fraleley*, 830 F. Supp. 2d 785 (No. 11-CV-01726-LHK)).

71. Alexandra J. Roberts, *False Influencing*, 109 GEO. L.J. 81, 93–94 (2020).

72. *Id.*

Influencers and brands increasingly rely on marketing companies to connect them.⁷³ Marketing companies that choose to work with influencers manage them by assigning them to specific social media campaigns and facilitating their endorsements.⁷⁴ The success of influencers has initiated an industry devoted to influencer marketing. In fact, 930 new marketing manager platforms and agencies opened between 2016 and 2020.⁷⁵

However, not all influencers and brands comply with the promotional agreements they agree to. Some influencers do not thoroughly research or test the products that they choose to promote.⁷⁶ Influencers sometimes endorse products simply for payment, and this can mislead consumers.⁷⁷ While there is some government regulation regarding misleading endorsements, this Comment argues that the current regulations are insufficient and need to be improved.

II. THE FTC’S REGULATION AND ENFORCEMENT OF MISLEADING ADVERTISING

Congress created the FTC in 1914 and it has regulated “unfair and deceptive acts or practices” since 1938.⁷⁸ This Part provides an overview of the FTC’s role and power in regulating misleading advertising.

A. *The FTC and Its Enforcement Authority*

The FTC is a federal agency established by the Federal Trade Commission Act (FTCA).⁷⁹ The FTC’s mission is to protect consumers and competition by “preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity.”⁸⁰ In furtherance of its mission, the FTC enforces a variety of consumer protection laws.⁸¹ Specifically, section 5 of the FTCA empowers the FTC, among other things, to:

- (a) prevent unfair methods of competition and unfair or deceptive

73. *See It’s Been a Minute*, *supra* note 14, at 25:36.

74. *Id.*

75. *See Roberts*, *supra* note 71, at 94.

76. *It’s Been a Minute*, *supra* note 14, at 24:52.

77. *Id.*

78. *About the FTC*, *supra* note 9.

79. Pub. L. No. 63-203, 38 Stat. 717 (1914) (codified as amended at 15 U.S.C. §§ 41–58).

80. *About the FTC*, *supra* note 9.

81. *Id.*

- acts or practices in or affecting commerce;
- (b) seek monetary redress and other relief for conduct injurious to consumers;
- (c) prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establish[] requirements designed to prevent such acts or practices;
- (d) gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and
- (e) make reports and legislative recommendations to Congress and the public.⁸²

While the FTCA gives the FTC broad powers, this Comment focuses on the powers granted in sections 5(a) and (b). Section 5(a) of the FTCA states that “unfair or deceptive acts or practices in or affecting commerce[] are . . . declared unlawful.”⁸³ The FTC therefore has a broad mandate from Congress to protect the public from fraud and deception in the marketplace⁸⁴—even if the marketplace is a social media app.

Under section 5(b) of the FTCA, the FTC can challenge unfair or deceptive acts or practices through administrative adjudication.⁸⁵ When the FTC has “reason to believe” a violation occurred, it can issue a complaint outlining the charges.⁸⁶ If the respondent wants to settle those charges without admitting liability, they can sign a “consent agreement,” which waives all rights to judicial review.⁸⁷ If the FTC accepts the proposed consent agreement, it puts the order on the record for public comment for thirty days, after which it determines whether to make the order final.⁸⁸ “If a respondent violates a final order, they are liable for a civil penalty for each violation.”⁸⁹

B. *FTC Guidance Relating to Misleading Advertisements*

The Guides Concerning Use of Endorsements and Testimonials in

82. *Federal Trade Commission Act*, FED. TRADE COMM’N, <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act> [<https://perma.cc/LPW3-9MFJ>].

83. 15 U.S.C. § 45(a)(1).

84. *Protecting Consumers*, FED. TRADE COMM’N, <https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers> [<https://perma.cc/3UHS-NSHW>].

85. *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM’N (May 2021), <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority> [<https://perma.cc/2Q5C-YK3E>].

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

Advertising (herein referred to as “the Endorsement Guides”) provide guidance on how the FTC enforces section 5 of the FTCA in the context of advertising.⁹⁰ The Endorsement Guides are administrative interpretations of the laws enforced by the FTC.⁹¹ They “provide the basis for voluntary compliance with the law by advertisers and endorsers.”⁹² Practices that are inconsistent with the Endorsement Guides may result in disciplinary action by the FTC under section 5.⁹³

The Endorsement Guides, “first enacted in 1980 and amended in 2009,”⁹⁴ require that “endorsements must be honest and not misleading.”⁹⁵ The Endorsement Guides explain that connections between a brand and the person endorsing the product should be disclosed, especially when the consumer would not expect a relationship between the brand and endorser or when this may affect the consumer’s evaluation of the endorsement.⁹⁶ For example, if an influencer endorses a product that is produced by a relative, this may affect the consumer’s evaluation of an endorsement and therefore the relationship must be disclosed.⁹⁷ The Endorsement Guides further explain that advertisements must provide proof that the endorser’s experience is generally achievable by others.⁹⁸ For example, if an influencer includes a testimonial in their endorsement which claims they lost fifty pounds in six months with a weight loss supplement, that result must be generally achievable by others for the influencer to advertise it.⁹⁹

The Endorsement Guides apply to all forms of advertisements, including social media, blogs, product placements, online review programs, and testimonials.¹⁰⁰ While the Endorsement Guides were created in 1980 and updated in 2009, the FTC only started regulating the

90. FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255 (2022).

91. *Id.*

92. *Id.*

93. *Id.*

94. Press Release, Fed. Trade Comm’n, FTC Seeks Public Comment on Its Endorsement Guides (Feb. 12, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-seeks-public-comment-its-endorsement-guides> [<https://perma.cc/GN2R-5LJZ>].

95. *The FTC’s Endorsement Guides: What People Are Asking*, FED. TRADE COMM’N (Aug. 27, 2020) [hereinafter *What People Are Asking*], <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking> [<https://perma.cc/5WNR-CNZH>].

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

social media industry in the last decade.¹⁰¹

III. REGULATION AND ENFORCEMENT OF THE INFLUENCER INDUSTRY

Beginning in 2016, the FTC began enforcing the Endorsement Guides and the FTCA against social media influencers and brands directly.¹⁰² The FTC also provided further guidance on the enforcement of section 5.¹⁰³ This section provides further historical background of the FTC's regulation and enforcement, specifically in the influencer industry.

A. *Early FTC Action Against the Influencer Industry*

The rise of the influencer industry in the 2010s created unique problems in social media regulation, causing the FTC to question some influencer marketing practices. One of the first FTC cases in the influencer industry was in March 2016.¹⁰⁴ The FTC brought charges against Lord & Taylor,¹⁰⁵ alleging that the department store had hired fifty fashion influencers to post photos of themselves on Instagram while outfitted in Lord & Taylor dresses.¹⁰⁶ The FTC was concerned that neither the influencers nor Lord & Taylor disclosed the fact that the influencers received the dresses for free and were also paid thousands of dollars for their posts.¹⁰⁷ Lord & Taylor settled the charges with the FTC by agreeing that future marketing deals would require influencers to clearly disclose when they have been compensated in exchange for their endorsements.¹⁰⁸ If Lord & Taylor violated this final order, it would have been subject to civil penalties for each violation.¹⁰⁹

101. See Cayce Myers, *Social Media Influencers and Transparency: FTC Gives New Guidance for Disclosing Brand Relationships*, INST. FOR PUB. RELS. (Dec. 3, 2019), <https://instituteforpr.org/social-media-influencers-and-transparency-ftc-gives-new-guidance-for-disclosing-brand-relationships/#:~:text=The%20Institute%20for%20Public%20Relations%20first%20addressed%20FTC,the%20rise%20of%20third-party%20endorsers%2C%20ambassadors%2C%20and%20influencers> [https://perma.cc/J8VL-3REQ].

102. See *infra* section III.A.

103. See *infra* section III.A–B.

104. Press Release, Fed. Trade Comm'n, *supra* note 12.

105. Lord & Taylor is a department store that filed for bankruptcy in August of 2020. Jordan Valinsky, *Lord & Taylor Is Closing All Its Stores After 194 Years in Business*, CNN (Aug. 27, 2020, 10:37 AM), <https://www.cnn.com/2020/08/27/business/lord-and-taylor-store-closures-bankruptcy/index.html> [https://perma.cc/V9M5-3MRP].

106. Press Release, Fed. Trade Comm'n, *supra* note 12.

107. *Id.*

108. *Id.*

109. See *supra* section II.A.

In 2017, after the Lord & Taylor lawsuit, the FTC issued an updated version of an FTC staff guidance document on the Endorsement Guides.¹¹⁰ This document was titled “What People Are Asking” and answered questions specifically about social media and influencers.¹¹¹ The FTC’s updates included guidance about whether tags in pictures¹¹² are sufficient to disclose an endorsement, how to disclose on Instagram and Snapchat, whether free travel related to an endorsement deal needs to be disclosed, what terminology to use for disclosures, and where disclosure should be located within posts.¹¹³

After updating its guidance, the FTC took more direct measures to regulate the influencer industry. In April 2017, the FTC sent out more than ninety letters reminding influencers and marketers that influencers must clearly and conspicuously disclose their relationships with brands when promoting or endorsing products through social media.¹¹⁴ Some letters cited specific social media posts and identified why they were not in compliance with the FTCA.¹¹⁵ This was the first time that the FTC reached out to social media influencers directly.¹¹⁶

In September 2017, the FTC settled its first complaint against individual social media influencers.¹¹⁷ The FTC claimed that two social media influencers deceived consumers because they failed to disclose their ownership interests in an online gambling service called CSGO Lotto, which they endorsed.¹¹⁸ Furthermore, the FTC alleged that the two influencers paid other influencers to promote the company on other forms of social media without requiring the influencers to disclose the payments

110. Press Release, Fed. Trade Comm’n, CSGO Lotto Owners Settle FTC’s First-Ever Complaint Against Individual Social Media Influencers (Sept. 7, 2017), <https://www.ftc.gov/news-events/press-releases/2017/09/csgo-lotto-owners-settle-ftcs-first-ever-complaint-against> [<https://perma.cc/W7EY-EZRX>]; see also *What People Are Asking*, *supra* note 95 (showing the FTC’s guidance on the Endorsement Guides).

111. *What People Are Asking*, *supra* note 95.

112. “Tags” allow a social media user to identify another social media user or business in a post. *What Does Tagging Mean?*, THRIVEHIVE (Jan. 20, 2016), <https://thrivehive.com/what-does-tagging-mean/> [<https://perma.cc/V8RF-USEW>]. “The tag takes the form of a clickable name or username” in the photo or video. *Id.* That user or business will be notified when you include the tag in a post. *Id.*

113. Press Release, Fed. Trade Comm’n, *supra* note 110.

114. Press Release, Fed. Trade Comm’n, FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship (Apr. 19, 2017), <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose> [<https://perma.cc/Y3JU-9FYE>].

115. *Id.* While the specific letters were not published, the FTC explained that many letter recipients were not disclosing relationships within the first three lines of a longer Instagram post. *Id.* Additionally, the letters noted that when users posted multiple hashtags, readers might skip over them, making a disclosure in a string of hashtags less likely to be conspicuous. *Id.*

116. *Id.*

117. Press Release, Fed. Trade Comm’n, *supra* note 110.

118. *Id.*

in their posts.¹¹⁹ In the final consent order, the two influencers agreed to clearly and conspicuously disclose any future material connections¹²⁰ with an endorser, or any promoted product or service.¹²¹ Violating this consent order can result in civil penalties for each violation.¹²² In addition to the action taken against CSGO Lotto and these two influencers, the FTC also sent warning letters to twenty-one other social media influencers on the same day regarding Instagram posts that violated the guidelines.¹²³

On top of the violations relating to endorsement disclosure, the FTC brought actions against brands for false account information. In the fall of 2019, the FTC settled charges with Devumi,¹²⁴ a company that operated websites that sold “fake indicators of social media influence,”¹²⁵ such as fake followers, views, likes, and subscribers, to social media users on various platforms.¹²⁶ These metrics are used by consumers and businesses to make purchasing decisions.¹²⁷ This means that if these metrics are false, they can mislead consumers.¹²⁸ The FTC alleged that Devumi filled more than 58,000 orders for fake Twitter followers and completed more than 4,000 sales of fake YouTube subscribers, 32,000 sales of fake YouTube views, and more than 800 sales of fake LinkedIn followers.¹²⁹ It also alleged that Devumi violated section 5(a) of the FTCA by committing “unfair or deceptive acts or practices in or affecting commerce.”¹³⁰ As part of the settlement, Devumi is banned from selling or aiding others in selling “social media influence” to users of social media platforms.¹³¹

119. *Id.*

120. “Material connections” exist when an influencer has an endorsement or brand deal. *See infra* section III.B.

121. Final Decision and Order, CSGOLotto, Inc., Fed. Trade Comm’n, No. 162-3184 (Nov. 28, 2017), https://www.ftc.gov/system/files/documents/cases/1623184_c_csgolotto_decision_and_order.pdf [<https://perma.cc/DNU7-2N3S>]; *see also* Press Release, Fed. Trade Comm’n, *supra* note 110 (announcing the final consent order between the two influencers and the FTC).

122. Press Release, Fed. Trade Comm’n, *supra* note 110.

123. *Id.*

124. Press Release, Fed. Trade Comm’n, Devumi, Owner and CEO Settle FTC Charges They Sold Fake Indicators of Social Media Influence; Cosmetics Firm Sunday Riley, CEO Settle FTC Charges That Employees Posted Fake Online Reviews at CEO’s Direction (Oct. 21, 2019), <https://www.ftc.gov/news-events/press-releases/2019/10/devumi-owner-ceo-settle-ftc-charges-they-sold-fake-indicators> [<https://perma.cc/EZW6-WBJU>].

125. Complaint at 3, Fed. Trade Comm’n v. Devumi, LLC, No. 9:19-CV-81419 (S.D. Fla. Oct. 18, 2019).

126. *Id.*

127. *See* Complaint, *supra* note 125, at 3.

128. *See id.*

129. Press Release, Fed. Trade Comm’n, *supra* note 124.

130. Complaint, *supra* note 125, at 4; *see also* 15 U.S.C. § 45(a)(1).

131. Press Release, Fed. Trade Comm’n, *supra* note 124.

Additionally, Devumi's CEO was required to pay \$2,500,000, which represents the amount that the FTC alleged he was paid by Devumi or its parent company.¹³²

Each of these events represents the FTC's growing focus on social media marketing and the influencer industry as unregulated advertisers. As a result of its increased attention to social media, the FTC issued an Endorsement Guide specifically for influencers.

B. *The 2019 Influencer Guide*

In November 2019, the FTC released the "Disclosures 101 for Social Media Influencers" guide (herein referred to as the "2019 Influencer Guide").¹³³ The 2019 Influencer Guide provides the most specific guidance to date regarding influencer endorsement disclosure.¹³⁴ It states that advertisers and endorsers, specifically in the context of social media influencers, have responsibilities relating to the advertising and marketing of products.¹³⁵ The 2019 Influencer Guide repeatedly emphasizes the core advice of the FTC: "If you endorse a product through social media, your endorsement message should make it obvious when you have a relationship . . . with the brand."¹³⁶ More specifically, the 2019 Influencer Guide explains that if an influencer chooses to mention a brand or product, they must also disclose material connections, such as when the influencer has any "financial, employment, personal, or family relationship with a brand."¹³⁷ Financial relationships are not limited to money; they also include free or discounted products or anything else of value the influencer received in return for mentioning the product.¹³⁸ The 2019 Influencer Guide also states that when an influencer tags a brand in one of their photos or videos, the influencer must also disclose their

132. Upon payment of \$250,000, the rest of the judgment is suspended unless the CEO is later found to have misrepresented his financial standings, in which case the remainder of the judgment will become due. *See id.*

133. *See Disclosures 101 for Social Media Influencers*, *supra* note 10; Anthony E. DiResta, Kwamina Thomas Williford & Da'Morus A. Cohen, *Key Takeaways from FTC's "Disclosures 101 for Social Media Influencers"*, HOLLAND & KNIGHT (Nov. 6, 2019), <https://www.hklaw.com/en/insights/publications/2019/11/key-takeaways-from-ftcs-disclosures-101-for-social-media-influencers> [https://perma.cc/B62M-8L23]; Jeremy Haile, *Four Things You Need to Know About the FTC's Influencer Guidelines*, FORBES (Jan. 3, 2020, 6:30 AM), <https://www.forbes.com/sites/forbesagencycouncil/2020/01/03/four-things-you-need-to-know-about-the-ftcs-influencer-guidelines/?sh=388332551fcc> [https://perma.cc/T9BB-RW5Y].

134. *See Disclosures 101 for Social Media Influencers*, *supra* note 10.

135. *See id.* at 2.

136. *Id.*

137. *Id.* at 3.

138. *See id.*

relationship with the brand using explicit text; disclosure requirements are not just limited to posts where the influencer includes a message about the brand.¹³⁹

The 2019 Influencer Guide then clarifies how influencers should disclose their relationships with brands.¹⁴⁰ Disclosures must be featured so that they are hard to miss, and they must be in the first few lines of messaging.¹⁴¹ A consumer should not have to click the “more” button on a post to see the endorsement, and the endorsements cannot be solely posted on a profile or “About Me” page.¹⁴² Disclosures must be clearly and conspicuously included in the endorsement message itself.¹⁴³

The 2019 Influencer Guide also explains that disclosures are required across all types of social media. For example, if an endorsement is featured on an Instagram or Snapchat story,¹⁴⁴ it must include a superimposed disclosure over the picture or video and it must appear for long enough for users to notice and read it.¹⁴⁵ Endorsements must also be disclosed in livestreams and repeated periodically throughout the livestream so that viewers who only watch a portion of the livestream can see it.¹⁴⁶

Finally, the 2019 Influencer Guide explains how endorsements should be phrased.¹⁴⁷ Endorsements need to be disclosed in clear and simple language.¹⁴⁸ Simple explanations placed in ways that are hard to miss, and the use of terms such as “advertisement,” “ad,” and “sponsored,” are encouraged.¹⁴⁹ The 2019 Influencer Guide also says that influencers cannot talk about experiences with products they have not tried, nor can they lie and say a product is great if they actually thought it was horrible.¹⁵⁰

139. *See id.* at 3–4.

140. *See id.* at 4.

141. *See id.*

142. *Id.*

143. *Id.*

144. Instagram stories are videos or images that share users’ “moments and experiences.” *Stories*, INSTAGRAM, <https://about.instagram.com/features/stories> [<https://perma.cc/2H6Y-S4UJ>]. They expire after twenty-four hours unless they are posted to a profile’s “Highlights.” *Id.* Snapchat stories are a collection of videos and images that play in the order they were taken. *About Stories*, SNAPCHAT, <https://support.snapchat.com/en-US/article/about-stories> [<https://perma.cc/CHW5-QKBQ>]. Stories only last twenty-four hours. *Id.*

145. *See Disclosures 101 for Social Media Influencers*, *supra* note 10, at 4.

146. *Id.*

147. *Id.* at 5.

148. *Id.*

149. *Id.*

150. *Id.* at 6.

C. *Ongoing Issues with Noncompliance*

Despite the extensive information provided within the 2019 Influencer Guide, many social media influencers continue to not comply with FTC recommendations. One example of this was Susan Yara's Naturium skincare brand launch.¹⁵¹ Yara is a beauty influencer on YouTube with a following of over 1,250,000 users.¹⁵² She launched a beauty brand, Naturium, in February 2020, and actively posted about the brand on her accounts.¹⁵³ However, she did not disclose that she was one of two co-founders of the brand until June 2020.¹⁵⁴ Many of her followers were frustrated by this and even mentioned that her actions violated the FTCA.¹⁵⁵ However, the FTC has not taken action against Yara.

Another example of Endorsement Guides violations occurred in 2019 and 2020 by Savage X Fenty Lingerie.¹⁵⁶ One organization researched the advertising of Savage X Fenty lingerie across twenty-one different social media influencers between July 2019 and January 2020 and found that all of these influencers had "failed to disclose their material connection to the company in a clear and conspicuous manner."¹⁵⁷ The influencers either failed to include a disclosure at all, placed the disclosure in an inconspicuous location, or "used inadequate and unclear language to disclose the relationship."¹⁵⁸ Truth in Advertising, a consumer advocate group, filed a complaint with the FTC regarding these claims,¹⁵⁹ but the FTC has not brought an action against Savage X Fenty Lingerie.

Even companies that try to comply with FTC regulations might not do so adequately. This was the case with Teami, LLC. Teami is a company that sells wellness powders, tea blends, and natural skincare.¹⁶⁰ Teami paid social media influencers and celebrities, such as recording artist and rapper Cardi B and fitness influencers Katya Elise Henry and Brittany

151. Tohry, *supra* note 13.

152. *Id.*

153. *See id.*

154. *Id.*

155. *See id.*

156. *Savage X Fenty Deceptive Influencer Marketing Database*, *supra* note 13.

157. *Id.*

158. *Id.*

159. Mary Hanbury, *Rihanna's Inclusive Underwear Brand Is Being Accused of 'Deceptive Marketing' and Luring Shoppers into Paying Hefty Monthly Fees*, BUS. INSIDER (Feb. 12, 2020, 10:13 AM), <https://www.businessinsider.com/rihanna-savage-x-fenty-accused-of-deceptive-marketing-2020-2> [<https://perma.cc/J34L-WXKR>].

160. *FAQ'S!*, TEAMI, <https://www.teamiblends.com/pages/faq> [<https://perma.cc/QT2K-V4TF>].

Renner, to promote its products.¹⁶¹ The FTC alleged that Teami endorsers used ambiguous language in their posts to describe endorsements and consumers were not able to see the endorsement language easily; they had to click the “more” button on an Instagram post, for example, to see the endorsement language.¹⁶² Teami previously received a warning letter from the FTC in April 2018.¹⁶³ In the spring of 2020, Teami and its owners agreed to settle additional FTC charges alleging that they had promoted products using deceptive health claims and that they had social media influencers endorse their product without adequately disclosing their endorsements.¹⁶⁴ The settlement imposed a \$15,200,000 judgment, which was the total sales of the challenged products.¹⁶⁵ However, full payment was suspended after a payment of \$1,000,000 by the defendants because of their inability to pay the full judgment.¹⁶⁶

Teami implemented a social media policy prior to the FTC bringing these 2020 claims.¹⁶⁷ The policy stated that influencers had to disclose the brand relationship in the first part of social media posts, before a user clicked the “more” button.¹⁶⁸ This policy was communicated to influencers directly or incorporated into their agreements.¹⁶⁹ However, many influencers’ Instagram posts still did not comply with the policy.¹⁷⁰ Although Teami reviewed many of the posts that influencers shared, Teami did not enforce its requirement that disclosures be provided in the first part of their social media posts.¹⁷¹ The FTC held Teami liable for these posts because it “represented, directly or indirectly, expressly or by implication, that social media posts by influencers about Teami products reflected the views of individuals who had used the Teami product.”¹⁷²

161. Press Release, Fed. Trade Comm’n, Tea Marketer Misled Consumers, Didn’t Adequately Disclose Payments to Well-Known Influencers, FTC Alleges (Mar. 6, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/tea-marketer-misled-consumers-didnt-adequately-disclose-payments> [<https://perma.cc/TCD8-EVT6>].

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. Theodore C. Max, *FTC Cracks Down on Deceptive Social Media Campaign by Teami LLC*, NAT’L L. REV. (May 13, 2020), <https://www.natlawreview.com/article/ftc-cracks-down-deceptive-social-media-campaign-teami-llc> [<https://perma.cc/JA72-W3RZ>].

168. *Id.*

169. *Id.*

170. *Id.*

171. Complaint at 13, Fed. Trade Comm’n v. Teami, LLC, No. 8:20-CV-518 (M.D. Fla. Mar. 5, 2020).

172. *Id.* at 18.

Following the settlement, the FTC stated that “the Commission is committed to seeking strong remedies against advertisers that deceive consumers because deceptive or inaccurate information online prevents consumers from making informed purchasing decisions and creates an uneven playing field for those who follow the rules.”¹⁷³ The FTC also stated that it would hold both advertisers *and* social media influencers accountable for reviewing social media posts and ensuring that material connections between endorsers and advertisers are clearly and conspicuously disclosed.¹⁷⁴

However, the FTC has not lived up to these promises. First, the FTC has not pursued enforcement against influencers directly since the Teami settlement. Second, influencers continually fail to comply with the FTC guidelines, at least in part because they believe legal backlash is uncertain or unlikely.¹⁷⁵ In a survey of 85,000 influencers, only 64% said they always try every product that they endorse.¹⁷⁶ Finally, the FTC’s enforcement of the Endorsement Guides to date has been weak.¹⁷⁷ The FTC has penalized very few brands and influencers. Studies show that only about 25% of Instagram influencers included endorsement disclosures in their posts that were FTC compliant.¹⁷⁸ Former FTC Commissioner¹⁷⁹ Rohit Chopra admitted that the FTC has been inconsistent in its enforcement and that it had only sought limited sanctions in the past.¹⁸⁰ For example, in the case of the Lord & Taylor lawsuit, the FTC settled the matter with no findings of admission or liability and did not require Lord & Taylor to provide customer refunds or forfeit ill-gotten gains.¹⁸¹

However, the FTC does have a history of issuing severe penalties against companies in the context of other consumer-protection violations.

173. Max, *supra* note 167.

174. *Id.*

175. See Tohry, *supra* note 13.

176. Samone Wheeler, *We Asked, They Answered: Influencers Talk Authenticity*, INFLUENCE (Mar. 15, 2018), <https://influence.bloglovin.com/we-asked-they-answered-influencers-talk-authenticity-cad1cf8873da> [<https://perma.cc/CTE6-QS3E>].

177. Josh Constine, *FTC Votes to Review Influencer Marketing Rules & Penalties*, TECHCRUNCH (Feb. 12, 2020, 11:52 AM), <https://techcrunch.com/2020/02/12/ftc-influencer-marketing-law/> [<https://perma.cc/P7HA-5HRZ>].

178. Bannigan & Shane, *supra* note 1, at 250.

179. The Commission is made up of five Commissioners, each of whom is nominated by the President and confirmed by the Senate and serves a seven-year term. Up to three of the five Commissioners can be from the same political party. One Commissioner is chosen by the President to act as Chair. *Commissioners*, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc/commissioners> [<https://perma.cc/6WL6-2V66>].

180. See Statement of Commissioner Chopra, *supra* note 8.

181. *Id.* at 2–3; see also Press Release, Fed. Trade Comm’n, *supra* note 12.

In 2020, the FTC succeeded in eight civil penalties and sixty-six redress, disgorgement, or permanent injunction orders against companies for consumer protection violations.¹⁸² And in 2019, the FTC obtained a \$191,000,000 settlement from the University of Phoenix to resolve charges of deceptive advertising directed at prospective students.¹⁸³ Also in 2019, AT&T paid \$60,000,000 to settle litigation with the FTC regarding deceptive advertising.¹⁸⁴ Although the FTC has not required influencers or brands who work with influencers to pay settlements like these yet, it may in the future. Both FTC Commissioner Rebecca Kelly Slaughter and former Commissioner Rohit Chopra have recommended that the FTC establish a presumption that the Commission will pursue money settlements in cases involving dishonesty or fraud.¹⁸⁵ Chopra also stated that the FTC plans to seek tougher remedies for companies that fail to properly follow disclosure requirements.¹⁸⁶ Furthermore, the FTC has indicated that its focus going forward would be on advertisers, not small influencers, contrary to its prior statements.¹⁸⁷

IV. FTC SEEKS PUBLIC COMMENT FOR ENDORSEMENT GUIDE REVISIONS

This Part addresses the FTC's most recent attempts to regulate the influencer marketing industry. In February 2020, the FTC sought public comment on the Endorsement Guides as part of the agency's systematic review of all of its rules and regulations.¹⁸⁸ The FTC sought comment on a range of issues: whether the Endorsement Guides effectively address the prevalent practices in the marketplace, whether consumers have benefited

182. *Stats & Data 2020*, FED. TRADE COMM'N, <https://www.ftc.gov/reports/annual-highlights-2020/stats-data-2020> [https://perma.cc/F5XY-3ASZ].

183. Press Release, Fed. Trade Comm'n, FTC Obtains Record \$191 Million Settlement from University of Phoenix to Resolve FTC Charges It Used Deceptive Advertising to Attract Prospective Students (Dec. 10, 2019), <https://www.ftc.gov/news-events/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix> [https://perma.cc/84TP-F8G8].

184. Press Release, Fed. Trade Comm'n, AT&T to Pay \$60 Million to Resolve FTC Allegations It Misled Consumers with 'Unlimited Data' Promises (Nov. 5, 2019), <https://www.ftc.gov/news-events/press-releases/2019/11/att-pay-60-million-resolve-ftc-allegations-it-misled-consumers> [https://perma.cc/YQU6-ZYN7].

185. Richard B. Newman, *FTC Settlement with Sunday Riley Over Bogus Reviews Illustrates Agency Recognition of Litigation Risk Under FTC Act*, NAT'L L. REV. (Nov. 7, 2020), <https://www.natlawreview.com/article/ftc-settlement-sunday-riley-over-bogus-reviews-illustrates-agency-recognition> [https://perma.cc/YTN5-FR93].

186. See Statement of Commissioner Chopra, *supra* note 8.

187. *Id.* at 2.

188. The FTC provides public notice and seeks public comment in compliance with the Administrative Procedure Act. See Press Release, Fed. Trade Comm'n, *supra* note 94.

from the Endorsement Guides, and how effectively advertisers and endorsers are disclosing their material connections in social media.¹⁸⁹ The FTC was specifically concerned about three things: creating requirements for platforms that directly or indirectly profit from influencer marketing, such as Instagram, YouTube, and TikTok; turning existing elements of the Endorsement Guides into formal rules, so that violators can be liable for civil penalties and damages under the FTCA; and providing further specification for contractual requirements that companies must have with influencers, including sample terms for companies to use in their contracts.¹⁹⁰ Initially, the comment period was set for sixty days,¹⁹¹ but it was extended by an additional sixty days to June 22, 2020, due to the COVID-19 pandemic.¹⁹²

The FTC received 118 comments regarding the Endorsement Guides.¹⁹³ The comments were primarily from individuals, nonprofit organizations, and trade associations.¹⁹⁴ They addressed a range of concerns, including the influence of social media on children, the lack of guidance for esports platforms,¹⁹⁵ and the knowledge disparity between large and small businesses regarding the guidelines.¹⁹⁶ This Part highlights some of these comments in order to assess the general public sentiment toward the Endorsement Guides.

189. *Id.*

190. Statement of Commissioner Chopra, *supra* note 8.

191. Press Release, Fed. Trade Comm'n, FTC Extends Comment Deadline for Endorsement Guides Review to June 22 (Mar. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-extends-comment-deadline-endorsement-guides-review-june-22> [<https://perma.cc/3CHT-AYKQ>].

192. *Id.*

193. Guides Concerning the Use of Endorsements and Testimonials in Advertising, 85 Fed. Reg. 10104 (proposed Feb. 20, 2020) (to be codified at 16 C.F.R. pt. 255).

194. *Id.*

195. Esports are “video games that are played in a highly organized competitive environment. These games can range from popular, team-oriented multiplayer online battle arenas (MOBAs), to single player first person shooters, to survival battle royales, to virtual reconstructions of physical sports.” Marc Leroux-Parra, *Esports Part 1: What Are Esports?*, HARV. INT’L REV. (Apr. 24, 2020, 6:28 PM), <https://hir.harvard.edu/esports-part-1-what-are-esports/> [<https://perma.cc/JRD3-V264>]. Twitch, which is currently owned by Amazon, is the largest streaming platform associated with esports. *Id.*

196. See Tricia Meyer, Executive Director, Performance Marketing Association, Comment Letter on Performance Marketing Association Point of View on FTC Influencer Guidelines (June 21, 2020), <https://www.regulations.gov/document?D=FTC-2020-0017-0089> (last visited May 1, 2022).

A. *The Influence of Endorsements on Children*

The nonprofit organization Common Sense¹⁹⁷ submitted a comment focused on the influence that social media platforms have on children and the need for additional regulation for content viewed by children and teenagers.¹⁹⁸ Approximately 81% of teenagers use social media and 70% of teens use social media more than once per day.¹⁹⁹ Common Sense's comment highlighted teens' and children's inability to distinguish between endorsed content and non-endorsed content.²⁰⁰ Furthermore, Common Sense argued that teens are often unknowingly transformed into product ambassadors by being encouraged to submit photos and share products with friends.²⁰¹ Common Sense recommended that product endorsements by content creators should be blocked for children under the age of twelve.²⁰² Likewise, Common Sense recommended that teenagers should not be able to see endorsements for unhealthy food and drinks.²⁰³ Additionally, the comment suggested that the United States should consider replicating certain international regulation in this area.²⁰⁴ For example, Quebec's Consumer Protection Act bans commercial advertising that targets those under thirteen.²⁰⁵ The United Kingdom also adopted rules that counsel against placing unfair pressure on children to buy products.²⁰⁶

B. *The Lack of Guidance for Esports and Gaming*

The Esports Bar Association's comment summarized the need for additional regulation in esports.²⁰⁷ The Esports Bar Association is an "industry association for attorneys, in-house counsel, and law students

197. Common Sense is dedicated to solving issues relating to children's use of media and technology. See COMMON SENSE, <https://www.commonsense.org/> [<https://perma.cc/L92Q-UBE3>].

198. Ariel Fox Johnson, Senior Counsel, Common Sense, Comment Letter on Guides Concerning the Use of Endorsements and Testimonials in Advertising (June 22, 2020), <https://www.regulations.gov/document?D=FTC-2020-0017-0095> (last visited Apr. 30, 2022).

199. *Id.* at 2.

200. *Id.* at 2–3.

201. *Id.* at 5.

202. *Id.* at 10.

203. *Id.*

204. *Id.* at 10–11.

205. *Id.*

206. *Id.* at 11.

207. See Esports Bar Association Public Policy Committee, Comment Letter on Guides Concerning the Use of Endorsements and Testimonials in Advertising (June 22, 2020), <https://www.regulations.gov/document?D=FTC-2020-0017-0113> (last visited May 8, 2022).

who practice in esports and digital entertainment.”²⁰⁸ This comment highlighted the volume of consumers that currently use esports and gaming websites such as Twitch and YouTube.²⁰⁹ At the time of the comment, 3,800,000 unique influencers used Twitch each month.²¹⁰ Streaming platforms such as Twitch are very accessible to micro influencers given their low barriers to entry.²¹¹ Micro influencers are often less knowledgeable about the Endorsement Guides because they have fewer resources to help understand them.²¹² Because the Twitch platform fosters such large quantities of less sophisticated influencers, the platform’s need for clarity and examples in the Endorsement Guides is great.²¹³

Furthermore, the Association noted that brands frequently pressure online influencers to disregard the Endorsement Guides; one study suggested that 62% of online influencers have been pressured by brands to disregard the Endorsement Guides at least once.²¹⁴ The Esports Bar Association recommended that the FTC simplify the Endorsement Guides for micro influencers and clarify the 2019 Influencer Guide for gaming influencers.²¹⁵ The 2019 Influencer Guide provides nine examples related to disclosing material connections.²¹⁶ The Esports Bar Association suggested that the FTC add a new example that applies specifically to gaming influencers.²¹⁷ Finally, the Association recommended adding a requirement that brands include in their contracts with influencers an agreement to abide by the Endorsement Guides.²¹⁸ This would place the burden of disclosing connections on the brand, not the gaming influencer.²¹⁹

C. *The Endorsement Guides’ Effects on Small Business*

Performance Marketing Association (PMA), a non-profit trade association focused on promoting the growth of the influencer industry,

208. *Id.* at 1.

209. *Id.* at 1–2.

210. *Id.* at 2.

211. *Id.*

212. *Id.*

213. *See id.*

214. *Id.* at 3.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

submitted a comment regarding the Endorsement Guides' effect on small businesses.²²⁰ It highlighted the disparity in knowledge and resources between large and small businesses and the need for greater clarity for smaller businesses who are seeking influencer endorsements.²²¹ PMA argued that smaller businesses may not be able to afford legal advice on the guidelines and therefore may struggle to interpret them.²²² PMA also requested that the FTC provide a simple disclosure option.²²³ Although PMA did not provide an example of what this simple disclosure option would look like, it insisted that influencers would still have the option of explaining the specifics of their connection if they did not want to use the simple disclosure option.²²⁴ Finally, PMA recommended that the FTC ask leading social media platforms to develop a disclosure mechanism within their platforms so that influencers can more easily disclose relationships.²²⁵

D. *Virtual Influencers*

Truth in Advertising, a nonprofit dedicated to educating consumers about the dangers of false and deceptive advertising,²²⁶ raised additional concerns regarding the use of virtual influencers.²²⁷ Virtual influencers are personas generated with artificial intelligence that promote products on social media, similar to the way human influencers do.²²⁸ Truth in Advertising maintains that brands use virtual influencers to endorse goods and services; therefore, the Endorsement Guides should be broadened to reflect this type of advertising.²²⁹

The Truth in Advertising comment also addressed the issue of enforcement—a concern shared by many of the other commentators.²³⁰

220. Meyer, *supra* note 196.

221. *Id.* at 2.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Truth in Advertising: Our Mission*, TRUTH IN ADVERT., <https://www.truthinadvertising.org/about/> [<https://perma.cc/CP5Q-CV4K>].

227. Bonnie Patten, Laura Smith & Michael J. Springer, Truth in Advertising, Inc., Comment Letter on Guides Concerning the Use of Endorsements and Testimonials in Advertising (June 22, 2020), <https://www.regulations.gov/document?D=FTC-2020-0017-0108> (last visited May 1, 2022).

228. “Lil Miquela” is one example of a virtual influencer. She wears and promotes real brands but is actually an avatar created by Brud, a Los Angeles-based start-up. See Emilia Petrarca, *Body Con Job*, CUT (May 14, 2018), <https://www.thecut.com/2018/05/lil-miquela-digital-avatar-instagram-influencer.html> [<https://perma.cc/2QNV-6HWH>]; Patten et al., *supra* note 227, at 5.

229. See Patten et al., *supra* note 227, at 5–8.

230. See *id.* at 22–23.

Truth in Advertising highlighted that the FTC resolved only twenty-two investigations involving social media marketing since 2011.²³¹ In eleven of the cases, the FTC did not bring charges.²³² The FTC entered into consent orders in the other eleven cases.²³³ Truth in Advertising requested that the FTC do more to enforce the Endorsement Guides.²³⁴ While the FTC did not provide a direct response to this comment, it has since announced its plan to enforce the Endorsement Guides more strictly going forward.²³⁵

V. RECOMMENDATIONS FOR ADVISING BRANDS AND INFLUENCERS

In this Part, the Comment provides advice for attorneys seeking to guide clients, specifically brands, on endorsement disclosures. It also provides recommendations for the FTC to improve its current guidance. The recommendations include that (1) brands need to ensure compliance by their contracted influencers because brands will ultimately be on the hook with the FTC; and that (2) the FTC needs to develop more comprehensive guidelines.

The FTC request for comments period ended on June 22, 2020.²³⁶ Since then, the FTC has been silent on its plan for revision or amendment to the Endorsement Guides. However, FTC Chair Lina M. Khan emphasized in her internal 2021 Vision and Priorities memo for the FTC that the agency should orient enforcement efforts towards root causes of unlawful conduct and should look “upstream at the firms that are enabling and profiting from this conduct.”²³⁷ Further, in October 2021, the FTC put many businesses on notice by sending Notice of Penalty Offenses to more than 700 companies.²³⁸ In doing so, the agency notified businesses that they could incur up to \$43,792 per violation if they continued to use

231. *Id.* at 22.

232. *Id.*

233. *Id.*

234. *Id.* at 23.

235. *See supra* section III.C.

236. *See* Press Release, Fed. Trade Comm’n, *supra* note 191.

237. Memorandum from Lina M. Khan, Comm’n Chair, Fed. Trade Comm’n, to Fed. Trade Comm’n Staff & Comm’rs (Sept. 22, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf [<https://perma.cc/EAU5-QGAC>].

238. Press Release, Fed. Trade Comm’n, FTC Puts Hundreds of Businesses on Notice About Fake Reviews and Other Misleading Endorsements (Oct. 13, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other> [<https://perma.cc/KTZ7-AD3Z>].

endorsements in ways that run counter to past FTC cases.²³⁹ Despite this notice, the FTC has not provided additional guidance nor updated the guidelines. Below are this Comment's recommendations for compliance with current FTC guidelines and improvements to FTC guidance.

A. *Brands Need to Monitor Their Influencer Promotions to Ensure Compliance*

While the FTC has historically been inconsistent with enforcement, its recent comments indicate that it plans to increase its enforcement activity.²⁴⁰ Therefore, it is important for advertisers to realize that the Endorsement Guides have a very broad scope, and to understand the breadth of situations where an endorsement disclosure is needed. The FTC has a history of imposing costly penalties in other consumer protection matters.²⁴¹ Because the FTC plans to enforce the guidelines more strictly against the brands, rather than influencers themselves, brands need to be the ones to ensure influencer compliance.

First, brands need to inform influencers of the importance of the Endorsement Guides. Brands must notify influencers that they are required to disclose *any* relationship with a brand, regardless of whether the influencer was paid to post, was provided free products, or received some other form of compensation. Any sort of relationship that may have influenced an endorsement needs to be disclosed.

Second, brands must provide influencers with detailed guidance on how to properly disclose relationships. Relationships need to be disclosed in a clear and obvious manner, no matter the format of the post. Livestreams and Snapchat and Instagram stories, for example, still require disclosures. For livestreams, the disclosure needs to be posted repeatedly throughout the livestream so that viewers can see the disclosure even if they only watch a segment of the live stream. Simply including a list of brands that an influencer is endorsed by in a bio or About Me section of a platform does not suffice.

The best way for brands to ensure that influencers are aware of and comply with the guidelines is by having the influencer sign a contract that includes very specific terms regarding disclosure of endorsements. The contract should include specific terminology that the influencer should use for the disclosure and where exactly within a post or video the disclosure should be displayed. The brand should provide the influencer with a copy of the Endorsement Guides and the 2019 Influencer Guide as

239. *Id.*

240. *See generally* Statement of Commissioner Chopra, *supra* note 8.

241. *See supra* section III.C.

well, so that the influencers can review the content of these materials themselves. The FTC has stated that it will consider requiring companies to include adherence measures like these in their contractual arrangements.²⁴² As such, brands should start to incorporate this language in agreements now.

Finally, brands must monitor the influencers they work with to ensure compliance. Brands should review the posts of influencers they work with and advise that influencers update or take down posts that do not comply with FTC guidelines.

It is especially important for brands to provide this information, guidance, and monitoring to influencers because the FTC has made it clear that it plans to hold businesses rather than individual influencers accountable for noncompliance with the Endorsement Guides.²⁴³ If brands include clear endorsement language in their contracts, provide ample guidance for influencers on how to use this endorsement language, and monitor influencer posts to ensure compliance, they will mitigate the likelihood of penalties from the FTC.

B. The FTC Needs to Develop More Comprehensive Guidelines and Utilize More Creative Methods to Encourage Compliance

The most progressive and effective change can come only from the FTC itself. This Comment provides three recommendations specifically for the FTC to improve its guidance. First, the FTC should require social media platforms to have disclosure tools. Second, the FTC should provide sample boilerplate contract terms for businesses to use in their endorsement contracts. Third, the FTC should review and update the 2019 Influencer Guide annually to adapt to evolving technologies.

1. Social Media Platforms Should Be Required to Have Disclosure Tools

First, to make the process easier for influencers and to make disclosure consistent, the FTC should require social media platforms to have built-in disclosure tools. The FTC should work with platforms to design each tool, so that influencers can detail the extent of their relationship to a brand within each platform. If all major social media platforms had user-friendly endorsement tools, and all influencers were required to use in-app endorsement tools, then disclosures would be more consistent and easier for users to understand and analyze.

242. See Statement of Commissioner Chopra, *supra* note 8.

243. *Id.*

Disclosure tools would allow influencers to disclose relationships in a clear and easy manner because they would have app-specific guidance on how to disclose. For micro and nano influencers especially, it can be challenging to navigate the details of the Endorsement Guides. A built-in disclosure tool would make the process easier for influencers who are not well versed in the Endorsement Guides.

For example, Instagram has a “branded content ads” tool that allows creators to disclose partnerships with a “paid partnership” label.²⁴⁴ This label can be applied to photos, stories, Reels, and live videos.²⁴⁵ However, not all platforms have disclosure tools, and use of disclosure tools is not required by the FTC, so use is inconsistent.

Disclosure tools would also allow the FTC to monitor influencers’ endorsements more easily because disclosures would be consistent across an application. A disclosure tool would give the FTC the ability to obtain specific reports regarding disclosure across the application. Additionally, it would enable consumers to understand disclosures more easily as they would be clear and consistent across accounts.

Finally, new social media applications are created all the time. The company that creates an application has the most knowledge about the functionality of the application and will therefore be best equipped to create the disclosure tool. Disclosure tools would allow the FTC to continue to regulate the industry without constantly updating guidance based on trending social media applications.

2. *The FTC Should Provide Boilerplate Contract Terms that Brands and Influencers Can Use*

Second, the FTC should write boilerplate, sample contract terms relating to endorsement deals which brands can integrate into their contracts. The companies that utilize influencer marketing range in size and experience. Many small businesses pay influencers for endorsements, but they often lack the legal knowledge that larger brands might have. Therefore, the FTC should provide sample contract terms that brands can choose to use in their contracts with influencers at their discretion. This would assist smaller brands who may need additional guidance to comply with FTC guidelines.

244. *Working with Creators Gives You More Ways to Flex*, INSTAGRAM, <https://business.instagram.com/ad-solutions/branded-content> [<https://perma.cc/W7PW-AZ36>].

245. *Id.*

3. *The FTC Should Review the “Disclosure 101 for Social Media Influencers Guide” Annually*

Finally, the FTC should review and update the “Disclosures 101 for Social Media Influencers Guide” (referred to herein as the “2019 Influencer Guide”) annually. Social media changes rapidly. New social media applications are created each year, and the trends on social media applications constantly change. The examples within the 2019 Influencer Guide became outdated or incomplete rapidly. For example, the 2019 Influencer Guide does not currently provide specific examples for video gamer influencers who use platforms such as Twitch, which has millions of users. Therefore, the FTC needs to provide new examples each year as social media changes. This would not be an annual overhaul of the Guide, but rather the addition of new examples, such as those relating to video game platforms, that apply to social media applications that were invented over the course of the prior year.

CONCLUSION

The world of social media influencers is rapidly changing, and so are the regulations that govern them. Influencer marketing remains a prominent form of marketing and continues to swiftly increase in value. However, with the rapid increase in social media users, the rising number of social media influencers, and the constant invention of new applications, it can be challenging for social media influencers and brands to know how to comply with the law. The FTC is attempting to catch up with these changes and create appropriate regulation and guidance. While the FTC works to provide greater clarity, influencers and brands must try their best to comply, given the information they have, or risk harsh penalties. This Comment provides attorneys with a comprehensive history of the FTC’s regulation of social media influencers and an insight into the areas of ambiguity within the regulation. Ultimately, this Comment recommends that brands increase their monitoring of the influencers they work with by providing guidance on how to disclose an endorsement to influencers before they post anything. Additionally, this Comment advises the FTC to develop more comprehensive guidelines to encourage compliance. Specifically, the Comment recommends that the FTC provide boilerplate contract terms for brands and influencers to use and update the 2019 Influencer Guide on an annual basis. These changes will not only minimize brands’ concerns about punishment but will also ensure that consumers are adequately informed when they make purchasing decisions.

