Dear Influencers: It's the FTC, Again - FTC Issues 21 Follow-up Warning Letters

September 8, 2017 – The TMCA
by Fara Sunderji

Back in the Spring, we posted about a set of 90 warning letters the FTC sent to influencers and brands about the disclosure of material connections on Instagram. While you may have spent your summer trying to unplug, the FTC staff was busy perusing Instagram. Just yesterday, the FTC announced that the staff sent another 21 follow-up warning letters to influencers. The letters cite to specific posts and request responses from the influencers by the end of September. We'll have to wait and see the FTC's next move. They are not releasing the names of the influencers for the time being, but the sample letter, which repeats some of the same guidance from the prior letters, contains a few points that are, accord to the FTC, worth repeating:

- a simple "thank you" is probably inadequate to inform consumers of a material connection because it does not sufficiently explain the nature of your relationship; consumers could understand "thank you" simply to mean that you are a satisfied customer
- consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click "more," and many consumers may not click "more." Therefore, you should disclose any material connection above the "more" button

In addition to these follow-up warning letters, the FTC also announced yesterday a newly updated version of The FTC's Endorsement Guides: What People Are Asking. The commission revised its Endorsement Guides in 2009, and followed up in 2010 with explanatory FAQs and other guidance about endorsements, testimonials and disclosure requirements in the social media context. The FAQs were last updated in 2015. The

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2017 update includes more than 20 new questions and answers advising social media influencers and marketers about how to disclose material connections in their posts. We will be blogging about the updated guide soon, so stay tuned.

But wait, there's more! The FTC announced its first-ever complaint against an individual social media influencer, which we will also be blogging about in the coming days. In the meantime, we will leave you with this helpful Do's and Don'ts graphic released by the FTC.


The Do's and Don'ts for Social Media Influencers
FTC RECOMMENDATIONS
PRACTICES TO AVOID
Clearly DISCLOSE when you have a financial or family relationship with a brand
DON'T ASSUME followers know about all your brand relationships
Ensure your sponsorship disclosure is HARD TO MISS
Don't assume disclosures BUILT INTO social media platforms are sufficient
Treat sponsored tags, including tags in pictures, LIKE ANY OTHER endorsement
Don't use AMBIGUOUS DISCLOSURES like "Thanks," #collab, #sp, #spon, or #ambassador
On image-only platforms like Snapchat, SUPERIMPOSE DISCLOSURES over the images
Don't rely on disclosures that people will see only if they CLICK "MORE"
Source: Federal Trade Commission