

# Retailer Reminder: FTC Releases Guidance for Social Media Influencers

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With the online shopping season in full swing, the FTC decided that online retailers might benefit from a reminder as to the dos and don'ts for social media influencers. Thus, the FTC released a new guide, "[Disclosures 101 for Social Media Influencers](#)," that reiterates its position about the responsibility of "influencers" to disclose "material" connections with brands when endorsing products in online posts. Beyond this new guide, which is written in an easy-to-read brochure format (with headings such as "How to Disclose" and "When to Disclose"), the FTC released related [videos](#) to convey the message that influencers should "stay on the right side of the law" and disclose when appropriate the relationship with a brand he or she is endorsing. This latest reminder to influencers comes on the heels of the FTC [sending 90 letters to influencers in April 2017](#) notifying them of their responsibilities under the FTC's [Endorsement Guides](#), and the prior publishing of an Endorsement Guides [FAQ](#). With the release of fresh guidance, now is a good time for brands with relationships with influencers to ensure endorsements are not deceptive and remain on the right side of the law. Indeed, advertisers should have reasonable programs in place to train and monitor members of their influencer network and influencers themselves should remain aware of requirements under the Endorsement Guides.

The main principle appears in § 255.0 of the Endorsement Guides: "Where the connection between the endorser and the product seller might 'materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience)' the connection must be 'fully disclosed.'" In the latest brochure, the FTC made several pointed reminders to influencers on how to comply with this requirement:

- **When to Disclose:** "When you have any financial, employment, personal, or family relationship with a brand," including if you received anything of value to

mention a product.

- **How to Disclose:** “Make sure people will see and understand the disclosure.” The FTC spends the majority of the brochure explaining the particulars of how influencers might effectively disclose a material connection to a brand. The disclosure should be “hard to miss” and in “simple and clear language” (e.g., “Sponsored”, “Paid Ad” or “[Brand] Ambassador” is generally clear, as is “Thank you [to brand] for this free product,” while “sp” or “thanks” is too vague, as are disclosures shrouded in a string of hashtags). Notably, the disclosure should be placed where the reader won’t miss it, given the particular platform (e.g., disclosures in the form of a hyperlink to “Legal” are not likely sufficient and disclosures should not be placed at a point in a post requiring the reader to click MORE). The FTC has previously advised that disclosures made in video ads for video on the screen long enough to be noticed, read, and understood.

It is worth noting that the FTC’s brochure emphasizes that it is the influencer’s responsibility to make adequate disclosures and to be familiar with the Guides. With the release of this new guide, it is fair to say that the issue of endorsement by social media influencers remains on the FTC’s radar, and should thus prompt a fresh look at compliance as the year draws to an end and into the coming year.

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- **Jeffrey D. Neuburger**  
Partner