COMMITTEE REPORT

Emerging Issues Committee

Influencers: A Legal Primer

OCTOBER 2025





Copyright © 2025 International Trademark Association.

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without prior written permission of the copyright owner, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.

INFLUENCERS: A LEGAL PRIMER

Assessment and way forward

(INTA EI Committee – Social Media SC)

Acknowledgements

This Committee Report was produced by the Social Media Subcommittee of the Emerging Issues Subcommittee. Special thanks to all the members of the said subcommittee: Philippe Gilliéron, head of the Social Media SC and drafter of the paper, Simon Ayrton, Sara Bauer, Laura Brett, Anne Coyle, Caen Dennis, Chris Ford, Faarhan Ho, Bisman Kaur, Bart Lieben, Chandimal Nicholas, Patricia Quintella, Nathaly Vermette, John Ward and John Wilson.

Special note to the attention of Bart Lieben who worked on the model influencer agreement attached as annex I to this paper.

Disclaimer

All information provided by the International Trademark Association in this document is provided to the public as a source of general information on Influencers: A Legal Primer. In legal matters, no publication, whether in written or electronic form, can take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the laws of the relevant country. While efforts have been made to ensure the accuracy of the information in this document, it should not be treated as the basis for formulating business decisions without professional advice. We emphasize that intellectual property and other applicable laws to the subject of this report laws vary from country to country, and between jurisdictions within some countries.

Table of content

I. INTRODUCTION: ECONOMICS OF INFLUENCERS 3
A. What is an influencer? 3
B. Categories 3
C. Channels 4
D. Influencer market impact 5
II. COMMERCIAL COMMUNICATION 5
A. Compensation 6
B. Brand control 6
C. Factors to be taken into account 7
III. REGULATORY LANDSCAPE 7
A. The legal issues related to the influencers' activities in general 8
B. The guidelines enacted by the SROs 9
C. The FTC guidelines 13
D. The French Law 17
IV. DISCLOSURE REQUIREMENT 19
A. What has to be disclosed? 20
B. How does it have to be disclosed? 20
C. What is the wording to be used? 21
D. Do's and Don't 22
E. INFLUENCER AGREEMENT TEMPLATE 23
F. MOVE TOWARDS PROFESSIONALISM 23
Annex I 25

I. INTRODUCTION: ECONOMICS OF INFLUENCERS

Social media platforms facilitate online interactions and content sharing among users, significantly influencing public opinions and trends. Influencers leverage these platforms to shape consumer behavior and culture, often navigating the complexities of maintaining authenticity and ethical standards. However, they may encounter legal issues such as copyright infringement, false advertising, and violations of disclosure regulations.

A. What is an influencer?

The 11th version of the ICC Advertising and Communication Code (ICC 2024 Marketing Code), released in September 2024 defines "influencers" as follows:1

> "*individuals, organisations or machine-created or controlled representations i.e. avatars, who mainly use social media platforms to communicate and interact with their audiences including followers. In that context they may shape audience attitudes for commercial purposes, based on brand partnerships. However, they can also act outside any such arrangement, e.g. when promoting their own brand and products. In that case they are considered marketers (see definition below). Those who match this definition are covered by it even if they appear under a different name, such as creator or brand ambassador. It also includes those with a relatively small number of followers*".

Broadly construed, an influencer thus is a person, whether real or built as an AI avatar, who seeks to influence the behavior or opinions of others, especially in terms of their purchasing decisions. Influencers typically have established credibility and a large following in a specific industry or niche, and use their expertise, authority, or popularity to affect their audience.

B. Categories

More recently, there has become a distinction between several categories of influencers:2

- **Nano-influencers (1'000-10'000 followers):** with a modest following, nano influencers typically have more trusting relationships with followers and are great for hyper-targeted campaigns.

---

1 https://iccwbo.org/wp-content/uploads/sites/3/2024/09/ICC_2024_MarketingCode_2024.pdf.

2 Types of Social Media Influencers: Mega, Macro, Nano and Micro Influencers.

- **Micro-influencers (10’001-100’000 followers):** popular within a specific niche, micro influencers remain relatable and maintain high engagement rates with their target audience while getting more attention.

- **Macro-influencers (100’001-1’000’000 followers):** broad appeal which can originally stem from a niche. Their large audience is established over a long time at the expense of lower engagement rates.

- **Celebrity-influencers (above 1’000’000 followers):** well-known names in an industry with huge global audiences, making them great options for brand awareness campaigns but will likely cost a lot to work with.

Nano and micro-influencers often have a better ratio of true fans to casual followers, whereas Macro and celebrity-influencers typically have a larger number of followers and a broader reach.

C. Channels

Choosing the right social media platform can have an impact on how much you can grow as an influencer. This is the case both with regards to the size of the platform (below figures as of 2024) as well as the contemplated content:

- **YouTube:** (a) size: 2.5 billion active users; (b) content: primarily meant for long form videos, secondary for short form videos and live streaming.

- **Instagram:** (a) 2 billion active users; (b) content: primarily still image, secondary for videos and live streaming.

- **TikTok:** 1.2 billion active users; (b) content: primarily short form videos, secondary for live streaming.

- **X:** 541 million active users; (b) content: primarily text, secondary still images and videos

Instagram is now considered the most profitable platform, with TikTok gaining traction year after year.

D. Influencer market impact

According to Statistia, ad spending in the influencer advertising market worldwide is estimated to be around US$35 billion with an estimated annual growth rate of 9.91% and expected to reach over US$56 billion by 2029.3

Influencers drive consumer behavior, create trends, enhance brand awareness, enable targeted marketing, and build trust. Companies partner with influencers to launch campaigns aiming to boost sales, engagement, and brand awareness. The return on investment is often significant; as cited by Influencer Marketing Hub in their recent Influencer Marketing Benchmark Report, businesses earn an average of US$5.20 for every US$1 spent on influencer marketing.4

Overall, influencers play a crucial role in modern marketing strategies, making them highly valuable to companies and brand owners aiming to grow their business and maintain a competitive edge. Some of the ways businesses utilize influencers is through sponsored posts, affiliate marketing, brand partnerships, official network monetization programs, merchandising, etc.

Content created by influencers is viewed and followed by an increasing number of people, notably young people and minors. As a result, there is a common consensus that it has become vital to clearly draw the lines between genuine opinions shared by influencers (editorial content) and the ones that have a marketing content (commercial content), to avoid deceptiveness. Such a distinction is important because the lines between editorial and commercial content are easily blurred in an environment where influencers are also content creators, more than in traditional advertising.

II. COMMERCIAL COMMUNICATION

As put by the UK Committee of Advertising:5

> «*Simply put, the key rule here is that it needs to be clear that ads are ads*»

---

3 Influencer Advertising – Worldwide (https://www.statista.com/outlook/amo/advertising/influencer-advertising/worldwide)

4 Influencer Marketing Hub, “Influencer Marketing Benchmark Report 2019” (https://influencermarketinghub.com/resources/ebooks/influencer-marketing-benchmark-report-2019).

5 https://www.asa.org.uk/static/790d2e01-e3f8-4fea-b3c99ef91a9f04dc/Influencerguidance2023v4-FINAL.pdf

The first question to put under scrutiny thus consists of assessing when a communication made by an influencer can be considered a commercial communication.

Two key elements come into play:

A. Compensation

Only content for which influencers receive a form of compensation from the trademark holder will be subject to the advertising related requirements, in particular with regards to transparency.

Section 18.2 of the ICC 2024 Marketing Code provides that:

> "*Content uploaded concerning third parties constitutes a marketing communication only if the influencer has received some form of compensation from the brand, whether financial or through other arrangements and this should be immediately clear from the context or the content*."

Shall be considered as compensation any form of consideration provided by the trademark holder to the influencer in return for the advertise their products or services, whether monetary or not. Such will notably be the case of:

- Percentage based upon the number of "views", "likes", etc.;
- Free products or services;
- Pay per click or based upon the number of transactions entered into by viewers (notably when the influencer has joined an affiliate program);
- Being a director or a shareholder of the advertising company.

B. Brand control

The advertising company must exercise a certain level of control upon the communication made by the influencer. Such control may however show a certain level of granularity and take several forms, such as:

- Suggestion or proposal for the tone, structure and/or direction of a message;
- Requests for positive reviews;
- Requests for a specific number of posts related to a product;
- Requests to show the product in a social media post;
- Pre-suggested message script, scenario or speech;
- Requests to validate the content before its publication

It however is to be borne in mind that when an influencer provides an audio-visual media service within the context of sponsorship or product placement, brand control is not allowed

and shall not be taken into account (art. 10-11 Audio-Visual Media Services Directive, Directive 2018/1808)6.

C. Factors to be taken into account

Several factors may help assessing whether, confronted with an influencer generated content, such content may be considered as a commercial communication or an editorial content:

- Promotion of a product, expression of gratitude towards a brand, without referring to competitors' similar products;
- Mention of specific prices for products/services of a particular brand;
- Markedly laudatory tone of excessive praise of the products/services of a particular brand;
- Direct appeal to purchase the products/services of a particular brand;
- A lack of editorial or personal interest in the content (nothing else than the promotion of the products/services of a particular brand);
- Presence of affiliate links or discount codes for a particular brand;
- Displaying received gifts, or mentioning the possibility to receive gifts from a particular brand;
- Proof of previous collaborations between the brand and influencer, recent public announcement that a collaboration has occurred or will occur.

III. REGULATORY LANDSCAPE

As of today (end 2024), France is the only country to have adopted a formal statute related to influencers, namely Law n° 2023-451 of June 9, 2023 on influencers ("Law on Influencers").7 The Online Safety Bill in the UK proposes to hold social media platforms accountable for harmful content, including content posted by influencers. It includes

6 Directive 2018/1808, L_2018303EN.01006901.xml. This should however be the exception taking into account the notion of "audiovisual media service", which refers to either a television broadcast or an on-demand audiovisual media service as defined under this Directive, requirements that influencers should rarely fulfill.

7 Available in French at: LOI n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux (1) - https://www.legifrance.gouv.fr/loda/id/JORFTEXT000047663185.

measures to ensure platforms enforce their own community standards and protect users from online harm.8

In the United States of America, the Federal Trade Commission ("FTC") has adopted Guidelines Concerning Use of Endorsements and Testimonials in Advertising" (16 CFR Part 255), that will also apply to influencers.9 The FTC has also issued specific guidance, "Disclosures 101 for Social Media Influencers," explaining influencers' disclosure obligations under U.S. law.10

A significant number of countries have for instance left it up to their national self-regulatory organizations (SROs) to adopt guidelines related to influencers.

A. The legal issues related to the influencers' activities in general

For the vast majority of countries, influencers' activities and related content are exclusively dealt with by the general legal background, which notably includes:

- Trademarks (absence of third parties' trademark rights and compliance with the scope of the granted license);
- Copyrights (absence of third parties' copyrights);
- Publicity rights (entitlement to display individuals' personae or likeness);
- Data protection (compliance with the applicable laws, notably GDPR if EU residents are targeted by the advertiser/influencer);
- Advertising closely related to consumer protection (commercial communications should be truthful, *i.e.* not deceive or mislead the audience, and any statement should be substantiated);
- Employment and tax obligations (the classification of influencers as independent contractors or employees can have significant tax obligations and legal implications);
- Terms and conditions (influencers have to comply with the T&Cs of the platforms they use to create their content).

Current regulatory focus is put upon influencers' duty to ensure that their endorsements are truthful and do not lead consumers to be deceived or misled. It is therefore no surprise

---

8 United Kingdom Government, https://www.gov.uk/government/collections/online-safety-bill.

9 Available at https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255.

10 Available at https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers.

that SROs play a significant role in this growing sector by definition meant to influence a potentially vulnerable audience like teens and children.

B. The guidelines enacted by the SROs

The International Council for Ad Self-Regulation (ICAS) maintains a listing of the SROs which have adopted guidelines dedicated to influencers.11 As of November 2024, close to thirty SROs were listed. The following are notably worth of being referred to:

- **Australia**: The Australian Influencer Marketing Council (AIMCO) has introduced a code of practice for influencers, which focuses on transparency and honest advertising. Legislative proposals aim to integrate these standards into broader advertising regulations.12

- **Canada**: the Influencer Marketing Disclosure Guidelines, which have been adopted in fall 2023 by the Ad Standards Influencers Marketing Steering Committee in Canada, are interesting as they incorporate numerous examples of do's and don't.13 Canada further proposes amendments to the Competition Act to strengthen consumer protection laws, including regulations on deceptive marketing practices by influencers.14

- **India**: The Advertising Standards Council of India (ASCI) has issued guidelines for influencer advertising, emphasizing clear labelling of paid content. Proposed laws aim to make these guidelines legally binding.15 India is an interesting case study as several cases related to influencers have already been filed into Court:

---

11 Guidelines for Social Media Influencers: https://icas.global/advertising-self-regulation/influencer-guidelines/.

12 Australian Influencer Marketing Council, "Code of Practice", https://aimco.org.au/best-practice.

13 The Canadian Influencer Marketing Disclosure Guidelines, https://adstandards.ca/wp-content/uploads/AdStandards-Influencer-Guidelines-EN-2023-FIN.pdf.

14 Competition Bureau Canada, "Competition Act", https://competition-bureau.canada.ca/deceptive-marketing-practices-digest-volume-4#sec01-1.

15 Advertising Standards Council of India, "Guidelines for Influencer Advertising on Digital Media", https://www.ascionline.in/the-asci-code-guidelines/

(i) *Marico Limited v. Abhijeet Bhansali.* On January 15, 2020 the Bombay High Court passed a landmark judgment in respect of a YouTube video titled, “Is Parachute Coconut Oil 100% Pure?” by a Youtuber- Abhijeet Bhansali under the alias “Bearded Chokra”. Defendant argued that the video above represented his point of view as a consumer in good faith and was protected by his fundamental right to freedom of speech and expression. The Court held that this right is not absolute and cannot defend irresponsible claims. It notably stated that social media influencers have a powerful impact on the lives of viewers and people in general and, as a result, have to ensure that what they post is not harmful or offensive. Consequently, the court ordered the defendant to remove the video from YouTube and any other platform on which it had been posted.

(ii) *M/s.Kaleeshwari Refinery Private Limited v Akshay A 2023 LiveLaw (Mad) 305.* In this case, the plaintiff was a leading market leader in the refined sunflower oil (RSO) and edible oil sector, which had been using its brand ' Gold Winner' for 30 years since 1993. The defendant, a self-proclaimed social media influencer, had accounts on several social media platforms including YouTube, Instagram and Facebook – with approximately 3,35,000 subscribers for his YouTube account. The defendant typically posted various videos criticising certain top brands by giving reviews about the quality of their products. On February 19, 2023, the defendant posted a video where he compared two different quantity ranges of 'Gold Winner' and alleged that a one litre packet of oil consisted of only 700ml of oil. The plaintiff alleged that the defendant had made a conscious attempt to defame the product and mislead viewers. The court noted that, “*In such circumstances the defendants’ action to disparage the plaintiff's product in a misleading manner would no doubt invite negative attention from the viewers and that will influence them to switch-over to some other products. So, the defendant's action appears to be with an intention to cause defame and damage the plaintiff's product*”. Though the company had claimed Rs. 10 million as damages, the court deemed it fit to allow the company to recover Rs 7,00,000 as damages.

(iii) *Dabur India Limited Vs Dhruv Rathee And Ors 2024 SCC OnLine Cal 2181.* The petitioner was a leading Indian manufacturer and distributor of Fast-Moving Consumer Goods under its house mark Dabur. The petitioner also manufactured and sold fruit juices and ready to serve

beverages under the brand name ‘Real’. Respondent no.1 was a social media influencer and claimed to be a “YouTube educator” having a YouTube channel by the name of “Dhruv Rathee” at URL:https://www.youtube.com/@dhruvrathee/featured. On February 14, 2023 the defendant no.1 had uploaded a video (the impugned video) on its YouTube channel with the title ‘***Is Fruit Juice Healthy?* | *The Harsh Truth’*** making comparisons between carbonated soft drinks and ReadyToServe fruit beverages. The overall impact of the impugned video was to generically disparage all packaged drinking fruit juices as harmful to health, including by making a link with the incidence of type 2 diabetes. The impugned video also conveyed to the public the message that drinking packaged fruit juices led to hair loss. In short, the impugned video advised consumers to avoid packaged fruit juices and strongly recommended not give them to children. Dabur contended that the impugned video was specifically aimed at denigrating and disparaging its packaged fruit products. It was also alleged that the impugned video was making a clear, direct and brazen reference to the products sold under the brand name “Real”. In doing so, respondent no.1 had deliberately and mischievously partially blurred the registered mark/logo “Real Fruit Power” in his video. The court permitted respondent no.1 to air, circulate or upload the impugned video only after having removed the offending portions in the impugned video, *i.e.* the ones making a reference to the petitioner’s product Real; the court further forbade the use of the trademark, copyright content, trade dress, packaging label and logo of the petitioner’s Real brand of products.

In September 2024, the ICC published **the ICC 2024 Marketing Code**, which serves as a basis for the SRO’s guidelines and which, as a result, may lead to some updates to those different guidelines.16

This latest revision brings key updates to strengthen provisions in crucial areas such as influencer marketing, artificial intelligence (AI), and environmental claims, as well as important guidelines for marketing to children and teenagers. A detailed overview of all changes is available here, including a new checklist feature designed to make the Code more accessible and user-friendly for marketers.

16 https://icas.global/the-icc-publishes-new-marketing-code/.

Section 18 of the ICC 2024 Marketing Code, which relates to influencers, transposes what can be considered as general advertising principles to ensure transparency and avoid misleading and deceptive advertisements. These principles can be summed up as follow:

- **Section 18.1 ("General principles")** is consistent with and reflects general advertising law principles. It first requires any statement made by influencers to be genuine, verifiable and relevant; consequently, communications that have become obsolete or misleading through the passage of time should not be used. It then provides that the sponsored nature of the communication should be made clear through an appropriate disclosure if the communication would not otherwise be understood as a communication message.

- **Section 18.2 ("Influencer marketing communications")** requires that:

  (i) All influencer marketing communications (including promotions of an influencer's own products) should be designed and presented in such a way that it is immediately identifiable as such, in accordance with the principles of identification and transparency.
  (ii) The connection between the marketer and the influencer should be transparent. Affiliate links to products on external third-party websites should be disclosed as such and their commercial nature transparent.
  (iii) Identification disclosures should not be obscured by or hidden among other content (for instance buried in a string of hashtags or in a "see more" section).
  (iv) Marketers should make sure that influencer marketing communications posted on their behalf include relevant qualifiers or statements to avoid misleading consumers about the standards, qualities, attributes, costs or other features of the product involved.
  (v) Conversely, influencers should not create social media posts or other messages alleging the content is sponsored by a business when they have no agreement with the brand.

- **Section 18.3 ("Use of minors")** provides that, when the influencer is a minor, marketing communications should be based on a contract providing for explicit parental or guardian consent and protecting the minor against any undue exploitation. All content featuring minors should be age-appropriate, and the requirements set forth in Chapter E ("Children and teens") of the Code should be complied with.

Both the ICAS and the World Federal of Advertisers ("WFA") have partnered in 2025 to develop the WFA Global Guidance on Influencer Marketing,17 which is available for WFA members but unfortunately not in open access.18

C. The FTC guidelines

In the US, the FTC plays an integral role in regulating advertising and marketing practices on social media, ensuring compliance with consumer protection laws. By statute, the FTC is permitted to issue regulations and bring enforcement actions against "unfair or deceptive" business practices. In 1980, the FTC enacted the Guides Concerning Use of Endorsements and Testimonials in Advertising (the "Endorsement Guides"), which provide guidance on practices that may be unfair or deceptive in violation of the FTC Act.19

On June 29, 2023, the FTC updated its Endorsement Guides. These updated guidelines have a broader scope than just influencers but certainly apply both to influencers and the brands that hire them. The updates bring the following key changes:20

- the definition of "endorsement" now includes social media tags, seals, virtual influencers, and fake reviews;
- the "clear and conspicuous" disclosure definition now requires any disclosure to be unavoidable (i.e. in direct proximity to the endorsement) and phrased in simple and clear language so it is easily understandable to consumers. Notably, the guidelines highlight that the disclosure tools offered by platforms alone may be insufficient;
- the "material connection" disclosures (addressed above in section II A. as "compensation"), now encompass not only direct payments but also discounts, early access, and free products;
- consumer reviews should not distort consumer reaction;

---

[17] https://icas.global/icas-supports-the-development-of-wfa-global-guidance-on-influencer-marketing.

[18] https://icas.global/advertising-self-regulation/influencer-guidelines/.

19 FTC Seeks Public Comment on its Endorsement Guides, Federal Trade Commission (February 12, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/02/ftc-seeks-public-comment-its-endorsement-guides.

20 Federal Trade Commission Announces Updated Advertising Guides to Combat Deceptive Reviews and Endorsements, Federal Trade Commission (June 29, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/06/federal-trade-commission-announces-updated-advertising-guides-combat-deceptive-reviews-endorsements. For the guidelines themselves, see: https://www.ftc.gov/news-events/topics/truth-advertising/endorsements.

- advertising to children warrants special concern; and
- endorsers, advertisers, and intermediaries may be held liable for non-compliance.

For several years now, the FTC has taken enforcement actions relating to insufficient disclosures by influencers and others who are paid to offer positive testimonials about a company's products online:

- In December 2019, the FTC brough an enforcement action against UrthBox, Inc., alleging that the company failed to disclose that it provided compensation in exchange for positive consumer reviews.21
- In February 2022, the FTC brought an enforcement action against Teami, LLC, charging that Teami paid for endorsements from influencers who did not adequately disclose that they were being paid to promote Teami's products.22
- In November 2023, the FTC sent a warning letter to a dozen influencers and two trade associations over Instagram and TikTok posts promoting the safety of the artificial sweetener aspartame without clear disclosures that the influencers were paid for the content they created.23

Below are several recent real-life case studies from the BBB National Programs National Advertising Division, the US advertising SRO that reviews advertising including in response to complaints from competitors, trade associations, consumers or on its own initiative helping to build trust in advertising and support fair competition. These cases demonstrate how brands have had to adapt the way they post and interact with social media as a result of the Endorsement Guidelines:

- **Material Connections**: In several cases this year, NAD recommended influencers to disclose material connections to a brand.In one case NAD recommended that a celebrity endorsing Wonderbelly Antacids who was an

---

21 In re UrthBox, Inc., https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3028-urthbox-inc-matter.

22 In re Teami, LLC, https://www.ftc.gov/legal-library/browse/cases-proceedings/182-3174-teami-llc.

23 FTC Warns Two Trade Associations and a Dozen Influencers About Social Media Posts Promoting Consumption of Aspartame or Sugar (November 15, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-warns-two-trade-associations-dozen-influencers-about-social-media-posts-promoting-consumption.

investor in the brand disclose her connection to the brand.24 In another case, NAD recommended that influencers promoting Drunk Elephant beauty products disclose their connection to the brand and further determined that the disclosure, #drunkelephantpartner, was not clear because the words in the disclosure run together making it for consumers to understand.25 And in another case, NAD determined that a beauty influencer demonstrating the efficacy of Fenty skin products use of the disclosure "paid partnership" was sufficient to inform viewers of the material connection between the beauty brand and the influencer.26

NAD decisions, as well as FTC's actions have also indicated that consumers should know the brand that has a connection to the influencer, when the identity of the brand would not otherwise be clear from the context of the advertising.27

- **Disclosure Placement**: A company challenged its competitor, Goose Creek, based on the allegation that the competitor used videos of paid actors, but claimed that they were "real" consumer endorsers. The NAD did not find that the standard YouTube disclaimers "includes paid promotion" and "some videos may contain paid endorsements, paid promotions or paid

---

24 Ginger Health Company (Wonderbelly Antacids), Report #7283, *NAD/CARU Case Reports* (March 2024).

25 Drunk Elephant, LLC. (Drunk Elephant Skincare), Report #7328, *NAD/CARU Case Reports* (October 2024).

26 Fenty Skin LLC (Melt AWF Jelly Oil Makeup-Melting Cleanser), Report #7224, *NAD/CARU Case Reports* (April 2024).

27 See https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-warns-two-trade-associations-dozen-influencers-about-social-media-posts-promoting-consumption (FTC issued warning letters to the American Beverage Association and The Canadian Sugar Institute, and 12 health influencers, citing concerns over inadequate disclosures in Instagram and TikTok posts promoting aspartame or sugar-containing products. The FTC claimed the trade associations might not have adequately disclosed their relationship with the influencers because consumers might not be aware that the trade associations sponsored the content); see also Cariuma Central Pte., Ltd. (Cariuma Sneakers), Report #7168, *NAD/CARU Case Reports* (November 2023) (NAD recommended the brand disclose its material connection to the content when consumers would not know the sponsoring brand from the context of the advertising.)

performance by actors" accessible via a "see more" hyperlink were sufficient to be in compliance with the FTC Act. In two other cases, reviewing influencers demonstrating the efficacy of skincare products for Fenty Skin and beauty products for Drunk Elephant, NAD recommended that the material connection disclosure be placed in the demonstration video to ensure the disclosures were noticeable.28

- **Reviews and Rankings** : NAD recommended that a product review site should discontinue its rankings and reviews format, or amend its advertising to ensure reviews and rankings are unbiased, genuine, and independent. The site's content was deemed advertising and not independent with objective product rankings. NAD further determined that the "owned and operated by" language on the website was not sufficient to inform consumers that the reviews were not independent.

The aforementioned and other enforcement actions underscore the importance of compliance with the FTC's guidelines and can be summarized in the below takeaways.

- **Disclosure of material connections**: Endorsers must clearly disclose their relationships with brands if it might materially affect the weight or credibility of the endorsement, and that connection is not reasonably expected by the audience.
- **Material connections**: Conditional language, such as "may contain," is insufficient for disclosing material connections.
- **Disclosure placement**: Disclosures must be prominently displayed where endorsements are made, and should be easily noticeable, easily understandable, and hard to miss by ordinary consumers.
- **Sponsor disclosure**: When the sponsor of the content is not clear, the sponsor's identity must be disclosed.
- **Product rankings**: Product rankings are considered expert endorsements and should be based on an independent and unbiased analysis.
- **When shared to other platforms**, specifically Instagram, videos do not transfer with contextualizing information, and thus disclosures should be embedded directly into the subject video.
- **Actor disclosures**: When employing actors to look like regular consumers, clear and conspicuous disclosure is required, including both audio and visual disclosures, if the content is both audible and visual.

---

28 Fenty Skin LLC (Melt AWF Jelly Oil Makeup-Melting Cleanser), Report #7224, *NAD/CARU Case Reports* (April 2024); Drunk Elephant, LLC. (Drunk Elephant Skincare), Report #7328, *NAD/CARU Case Reports* (October 2024);

- **Platform disclosure tools**: Do not rely on platform disclosure tools alone to disclose material connections.
- **Brands are responsible for the actions of their influencers**, and thus should work with influencers to ensure that these influencers comply with the FTC's guidelines.

D. The French Law

The Law on Influencers, which came into force on June 10, 2023, was divided into two parts in its original version: the first part dealt with the definition of certain notions and the resulting obligations (art. 1-9); the second one related to processes related to the notification and take-down of certain contents and cooperation with online platforms (art. 10-18).

On April 22, 2024, the second part of the Law got deleted as a result of an alert raised by the EC Commission that art. 10-18 may overlap with certain requirements set forth in the Digital Services Act (DSA) and lead to difficulties in the implementation of the DSA.29

As a result, less than a year after its enactment, the Law on Influencers has already been amended to remove half of its provisions.

This being said, articles 1-9 remain in force and provide in a nutshell the following:

- **Notion**. An influencer is defined as "*any individual or legal entity which, against remuneration (not only financial) use its notoriety with a given audience to communicate electronically to an audience content meant to promote, directly or indirectly, products of services to influence the conclusion of transactions by its audience*."

  While AI influencers are not expressly referred to, scholars consider AI influencers to be in scope, as such avatars will be under the ultimate control of an individual or legal entity that will have to comply with the regulatory framework.In that regard, and without going here into details, an important debate currently exists in France as to whether influencers should also be considered as models within the meaning of Art. L.7123-2 of the Labor Code, which provides that "*shall be considered as a model anyone who, even occasionally, present to the public a product, service or commercial communication by reproducing its image on any visual or audiovisual*

29 Influence commerciale : que va-t-il rester de la loi du 9 juin 2023 ?, https://www.ddg.fr/actualite/influence-commerciale-que-va-t-il-rester-de-la-loi-du-9-juin-2023.

support, or is featured as a model without or without any further use of one's image". Models have to be salaried and hired as an employee by a model agency, as set out by Art. L-7123-3 of the Labor Code and Art. 14 of the French Collective Agreement related to Models. Based upon such definition, the question occurs as to whether influencers should be considered as models which, in the affirmative, would require them to be hired by a model agency under a specific labour agreement.

- **Prohibited practices.** Influencers are prohibited from promoting the following products or services:

  (i) Tobacco products and second generation products (vaping, puffs);
  (ii) Esthetic surgical treatment;
  (iii) Products promoted as being equivalent to therapeutic treatments (comparison is prohibited);
  (iv) Financial products (including related to cryptocurrencies and digital tokens);
  (v) Sports betting and gambling activities.

  Breaching this prohibition may lead to criminal sanction of up to two years of imprisonment and a fine up to € 300'000.

- **Restricted practices.** Influencers need to be cautious when the commercial communication relates to certain industries subject to specific requirements and restrictions, such as:

  (i) Food and nutritional products;
  (ii) Sodas, sugar drinks or transformed industrial food products;
  (iii) Drugs;
  (iv) Medical devices.

- **Disclosure.**

  (i) Labels need to be clear, readable and visible during the whole display of the content;
  (ii) Labels have to be expressly stated as #Publicité or #Collaboration commerciale (sanction of up to two years of imprisonment and € 300'000 fine);
  (iii) Modification of a picture needs to be labeled as #Images retouchées (sanction of up to one year of imprisonment and € 4'500 fine);

(iv) Output resulting from the use of AI tools needs to be labeled as #Images virtuelles (sanction of up to one year of imprisonment and € 4'500 fine)

- **Drop shipping.**

  Drop shipping is a form of retail business in which the seller accepts customer orders without keeping stock on hand. Instead, in a form of supply chain management, the seller transfers the orders and their shipment details either to the manufacturer, a wholesaler, another retailer, or a fulfillment house, which then ships the goods directly to the customer.

  When an influencer promotes goods as a drop shipper, it has to accept to be legally considered as the seller of the products towards its customers and comply with the applicable regulation related to distance selling and e-commerce.

  The qualification of an influencer as a drop shipper may thus lead to significant legal consequences, notably (but not only) with regards to the warranty of the products. To perform as a drop shipper should therefore be avoided.

- **Agreement.**

  Influencers need to have a written agreement entered into with the advertiser (which may take place through an influencer agency, with the difficulty in France to assess whether an influencer qualifies as a model and, in the affirmative, whether a model agency may also be an influencer agency).

  Such an agreement needs to cover the following points: (1) identity of the parties; (2) mission granted to the influencer; (3) remuneration (including its value if the remuneration is not financial); (4) rights and obligations, notably in relation to intellectual property rights and (5) French Law as governing law.

- **Representative.** Any influencer which is not based in the EU, Switzerland or EEA but targets the French public needs to appoint a representative in the EU that will have to (1) ensure that the agreement complies with the above-mentioned requirements and (2) respond to any query from an authority. Such representatives will have to enter into a professional liability insurance.

IV. DISCLOSURE REQUIREMENT

The key metric that emerges from the regulatory landscape highlighted in section III is the requirement for influencers to clearly draw their audience's attention when it is confronted with commercial communications.

A. What has to be disclosed?

Once content is qualified as marketing communication, such content has to be designed and presented in such as way so as to: (1) be easily identifiable as advertising by the audience (2) at their first interaction with the ad content.

Every content created by an influencer that includes ad content and each segment of a story that includes ad content needs to be identified as advertising.

If the content is wholly about affiliate-linked products, the whole of the content is advertising and the influencer will need to make that clear upfront.

If only some products mentioned in the content have affiliate links or codes (the rest being editorial), the influencer needs to make clear that the content that relates to affiliate linked products is advertising (for instance «ad» label clearly and prominently before any relevant content).

B. How does it have to be disclosed?

The following metrics are to be taken into account to assess whether the advertising nature of the content has been properly disclosed:

- **Nature**: the EASA invites the different SROs (self-regulatory organizations) to spell out the different possible transparency disclosure options influencers may have for the most popular digital online platforms (such as hashtags or references that the content is sponsored). Some platforms such as Instagram provide tools to make it easier for influencers to label branded content (“Paid Partnership” tool).
- **Language**: it is recommended to use tags in languages that are the ones applicable to the audience (if video is in English, disclosure should be in English as well). Regulatory issues may however come into play, such as French Law, which requires any such disclosure to be made in French.
- **Placement**: the disclosure should be put in a clear and evident place where the audience will be able to immediately identify the piece of content as marketing (for hashtag typically at the very top of any description or text). There should be no need to click or spend time working out whether it’s an ad or not). The disclosure should be placed in close proximity to the endorsement.

- **Wording**: phrases should be self-evident, clear and easily understandable (such as «these products have been sent for free to give a review» or «the trip was sponsored by»).
- **Timing**: disclosure should be made as soon the content is displayed (such as start of the video).

C. What is the wording to be used?

The following recommended wording has been suggested by the Canadian SRO in its guidelines (completed by others SROs' recommendations), depending upon the channel used by influencers and their related created content:

- **Video sharing platforms** (youtube, Instagram, tiktok): the disclosure should be included at the beginning of the video and aired in a visible way throughout the display of the video, and may be drafted as follows:

  «This video contains advertising for [advertiser]»

  «This video contains a paid partnership with [advertiser]»

  «[Advertiser] paid me to make this video»

  «Advertisement»

  «Paid promotion»

  «Paid partnership with [advertiser]»

- **Pictures/message sharing platforms** (Instagram, Facebook, X, snapchat)

  #advertising, #ad, #publicité

  #placementdeproduit

  #sonspored

  #collaborationcommerciale

  #gift

  #freesample

  #product review

  «Collaboration with @[advertiser] »

  «Made possible by @[advertiser]»

  «Received from @[advertiser]»

«Paid partnership with [advertiser]»

- **Podcast platforms**

  «this podcast contains advertising for [advertiser]»;

  «This episode contains a paid partnership with [advertiser]»;

  «[Advertiser] paid me to do this podcast»

  «I received the products (I discuss in my podcast) from [advertiser]»

  «This podcast is made possible by [advertiser] »

D. Do's and Don't

The following best practices seem to emerge from the recommendations made by the different SROs:

DO's	DON'T
Transparency: influencers have to clearly identify any ad content posted as followers may not tell the difference between organic and ad content;	Use too many labels or hashtags;
#newpost: every new post or story needs to be labelled if it's an ad;	Use labels which are only voiced and that will not be heard when consumers have their sound off;
Freebies: any post related to any freebies or gifts received should be identified as an ad;	Use labels which are only accessible via a «see more» or link
Labels: influencers should use labels such as «ad», «advert» or «advertisement» to identify ad content;	Have consumers watch a story or video before realising it's an ad;
Upfront: influencers need to make sure that the ad label is clearly visible when a consumer sees any posted ad content;	Use labels that are not visible as soon as consumers first interact with a post of ad content in a story
Extra care is needed with ads for alcohol, gambling, finance products, health & wellness that may be subject to additional regulatory requirements under the relevant advertising laws;	Direct consumers to another influencer's post or story to obtain clarity re: what is ad content;
	Use labels in a colour that does not sufficiently contrast with the background colour to be noticed;
	Use label which are too small to be noticed;

If the influencers uses multiple labels, labels in addition to «ad», «advert» or «advertisement» should be included only after and separate from that first key label.	Use label which are not in an obvious position to be noticed.

E. INFLUENCER AGREEMENT TEMPLATE

Taking into account the above assessment, the template attached as Annex I to this paper may serve as a basis to help advertisers and influencers enter into contract:

In order to ensure that the obligations put upon influencers are complied with, the following recommendations may additionally be addressed to brand owners:

- **Trademark Registration and Protection**
  - (i) Assist influencers in registering trademarks for their brand names, logos, and other use to protect against unauthorized use.
  - (ii) Continuously monitor the market for potential trademark infringements and take legal action when necessary.
- **Brand Guidelines and Usage**
  - (i) Develop consistent brand guidelines to ensure consistent use of trademarks across all platforms and by any partners or collaborators.
  - (ii) Establish clear policies for how third-parties can use trademarks, including co-branded content or partnerships.
- **Content Review***:*
  - (i) Review content to ensure it complies with trademark law and doesn't infringe on existing trademarks.
  - (ii) Provide guidance on avoiding the use of third-party trademarks without proper authorization.

F. MOVE TOWARDS PROFESSIONALISM

It is finally worth mentioning that France has initiated a move towards the professionalism of influencers.

The AARP (autorité de regulation professionnelle de la publicité) has launched a portal dedicated to influencers that contains numerous resources meant to support influencers in their efforts towards compliance with the Law on Influencers, as well as a certification

program to ensure that they meet certain standards. 30 The AARP has set up its Responsible Influence Observatory in 2020 and since certified more than 1’500 influencers.31

The French move towards professionalism of influencers has had an impact upon the European Advertising Standards Alliance (EASA), which has launched an Influencer Marketing Standards Training (IMST), an online course meant to be organized and managed by the SROs as a first step, combined with a Certification for Responsible Influencer Marketing as a second step.32

The EASA has further launched a tool called DiscloseMe, means to help influencers assess the way their disclosure should be made depending upon the jurisdiction they are in.33

The ASCI Academy in India has also launched “The Responsible Influencing Playbook, an ASCI certified course.34

30 Certificat de la Vente sociale Responsable - ARPP. The certifications can either be general or with options such as “financial advertising” or “gambling”. See: https://www.arpp.org/influence-responsable/certificat-vente-sociale-responsable/

31 Responsible influencer marketing | EASA – European Advertising Standards Alliance. See: https://www.easa-alliance.org/responsible-influence/.

32 Responsible influencer marketing | EASA – European Advertising Standards Alliance, at https://www.easa-alliance.org/responsible-influence/.

33 DiscloseMe | EASA – European Advertising Standards Alliance, at https://www.easa-alliance.org/discloseme/.

34 See: https://www.ascionline.in/academy/product/the-responsible-influencing-playbook/.

Annex I

Influencer Agreement

the "**Agreement**"

entered into on [date] (the "**Effective Date**") by and between:

[Company name], [registered office], [represented by];

Hereinafter: the "**Company**";

And:

[Name / Company name], [registered office / residing at], [represented by];

Hereinafter: the "**Influencer**";

Hereinafter jointly referred to as "**Parties**" or, individually, as "**Party**";

Considerations

WHEREAS, the Company wants to promote its products, services and brands online through various social media channels;

WHEREAS, Influencer is [to be completed];

WHEREAS, Parties have entered into discussions and negotiations regarding a collaboration whereby Influencer would assist Company in promoting its products, services and brands online, through specific social media channels where Influencer confirms to have a substantial reach towards Company's target audience;

NOW THEREFORE, Parties have agreed as follows:

Definitions

Parties agree that all capitalized terms used throughout this Agreement are defined as follows:

"**Brands**": means the Company's brands referred to in Annex 1;

"**Content**": high-quality, engaging, authentic and original content created by Influencer in the context of this Agreement, promoting the Company's Products, Services and Brand(s).

Content may include photos, videos, captions, texts, audio materials and other media supported by the Social Media Platforms;

"**Effective Date**": means the date referred to on the first page of this Agreement;

"**Intellectual Property**": means any know-how, patent, trade mark (whether registered or not), trade name, business name, company name, work protected under copyright (including but not limited to computer programs and databases), *sui generis* database right, method, registered design or other design right and any corresponding property or right under the laws of any jurisdiction throughout the world, together with any right to apply for the grant or registration of the same and any rights in any jurisdiction in the world in respect of an invention, discovery, trade secret, data, algorithm or formula;

"**Products**": means the Company's products referred to in Annex 1;

"**Services**": means the Company's services referred to in Annex 1;

"**Social Media Platforms**": the platforms set out in Article X;

Article 1. Object and Purpose

1.1 The primary purpose of this Agreement is to establish a collaboration between the Company and Influencer to promote the Company's Products, Services and Brands on selected Social Media Platforms. The Influencer will act as an ambassador for the Company, creating and sharing content designed to enhance the visibility of the Company and its Brand(s), engage target audiences, and support the Company's marketing and sales goals.

1.2 Considering the above, the Influencer agrees to create and post the Content in accordance with the terms of this Agreement, the Company's specified Branding Guidelines and values.

1.3 This collaboration and the Content is intended to reach [describe the Company's target audience]. Both Parties agree to direct efforts toward achieving optimal engagement within this audience demographic.

Article 2. Scope, Deliverables and Content Requirements

2.1 The Influencer agrees to produce Content that meets high standards of quality and is aesthetically pleasing, professional, and representative of the image of the Company and its Brands. The Influencer will ensure that all Content is:

- Created with high-resolution images and/or video quality suitable for social media standards and in line with the requirements of the Social Media Platforms;
- Free from inappropriate language, images, or any form of discrimination, harassment, or hate speech;
- In line with the guidelines and terms of use of the respective Social Media Platforms.

The Influencer agrees to communicate the Company's message effectively, aligning the Content with the Company's values, preferred tone and in accordance with the Company's Branding Guidelines. The Company may provide specific messaging points, hashtags, and keywords to be included in the Content. The Influencer will use these elements in a way that feels authentic and aligns with their personal style and audience engagement methods.

2.2 The Company shall provide the Influencer with messaging guidelines, including preferred hashtags, keywords, and content themes. The Influencer agrees to incorporate these elements into the Content where appropriate while maintaining authenticity. The Influencer will not create any content that depicts any of the Company's products, services or brands in a negative or misleading manner.

2.3 Influencer shall submit all Content for the Company's review at least [X] days before the scheduled posting date. The Company reserves the right to approve, reject, or request modifications to any Content that does not align with its brand image, messaging guidelines or marketing objectives. If no feedback is provided within [X] days from submission, the Content will be deemed approved.

2.4 Influencer will post the Content on the following social media platforms:

- [Platform 1];
- [Platform 2];
- Any other platforms mutually agreed upon by the Parties ("the Social Media Platforms".

The Influencer shall post the Content according to the following schedule:

- [Specify number of posts per week/month or specific dates] on [Platform 1]
- [Specify number of posts per week/month or specific dates] on [Platform 2]
- [Other timing requirements as agreed]

All posts must be made during peak engagement hours relevant to the Influencer's audience unless otherwise approved by the Company.

2.5 The Influencer agrees to participate in additional promotional activities, if requested by the Company, such as [interviews, live sessions, or giveaways] related to the Products or Services. Such activities will be compensated separately, as outlined in **Annex 2** of this Agreement, or as otherwise mutually agreed.

Article 3. Compensation and Payment Terms

3.1. As compensation for the services referred to in Article 2 of this Agreement, the Company agrees to pay the Influencer a total base fee of [amount]. The fee structure is as follows:

- Upfront Payment: [amount], payable upon signing this Agreement.
- Content Milestones: [amount] upon completion and posting of each piece of agreed Content, as specified in Schedule [X].
- Final Payment: [amount], payable upon fulfillment of all deliverables under this Agreement.

3.2. In addition to the base fees, the Influencer may earn performance-based incentives, calculated as follows:

- **Engagement Bonus**: A bonus of [amount] if the Content achieves an engagement rate of [X]% or higher within [timeframe].
- **Sales Commission**: A commission of [X]% on net sales generated through the Influencer's unique affiliate link or promo code, as tracked and verified by the Company's analytics.

3.3. Payments will be made by the Company to the Influencer according to the following schedule:

- The Upfront Payment shall be made within [X] days of signing this Agreement.
- Milestone payments will be made within [X] days after the completion and posting of each piece of Content.
- Final payment will be made within [X] days after all deliverables have been met and approved.

3.4. Payments will be made via [specified payment method, e.g., bank transfer, PayPal] to the Influencer's designated account. The Influencer shall provide all necessary payment details in writing prior to the first payment. Any bank or transaction fees related to payments shall be the responsibility of [Company/Influencer].

3.5. Company agrees to reimburse the Influencer for pre-approved expenses directly related to the creation of Content, including but not limited to [list applicable

expenses, e.g., travel, accommodations, production costs]. The Influencer must submit itemized receipts for any such expenses within [X days] of incurring them. Company will reimburse these expenses within [X days] of receiving the receipts.

3.6. If any payment is delayed beyond [X days] of the due date, Company shall be subject to a late fee of [X]% of the overdue amount, applied for each [time period, e.g., week/month] until payment is made in full. However, the Influencer shall provide written notice of any overdue payment and a [X-day] grace period before penalties or late payment interests apply.

3.7. Parties agree that any Products or Services provided to Influencer have been supplied in view of achieving the objectives set out in this Agreement. Influencer shall [be entitled to keep / return] these Products when this Agreement is terminated.

Article 4. Intellectual Property Rights; Image Rights

4.1. Any and all Intellectual Property rights relating to the Content created by the Influencer under this Agreement shall be automatically transferred to the Company upon payment of the respective Fees.

Influencer expressly confirms and accepts that no further remuneration shall be due in relation to the services and deliverables provided by the latter under this Agreement. In particular, Influencer confirms that he/she will refrain from claiming any additional equitable fees, compensation or remuneration relating to the creation and exploitation of the Content, and this to the maximum extent permitted by law.

[variant:

The Content created by the Influencer under this Agreement shall remain the Intellectual Property of the Influencer. However, the Influencer grants the Company a non-exclusive, worldwide, royalty-free license to use, reproduce, distribute, and display the Content on the Company's social media platforms, website, marketing materials, and advertising channels as specified in Article 4.2. The Content license shall remain in effect for the term of this Agreement and any additional period mutually agreed upon in writing.]

4.2. In particular, the transfer of any right, title and interest in the Intellectual Property referred to in Article 4.1 shall contain at least the following rights:

- The right to repost, share, and distribute the Content on the Company's official social media accounts and websites;
- The right to use the Content in email marketing campaigns, newsletters, and other digital promotions;

- The right to display the Content in paid advertisements across various digital and social media channels, subject to additional compensation or approval from the Influencer, as agreed in writing;
- The right to allow Company's sales channels, including but not limited to commercial agents, distributors and members of Company's partner networks in the largest sense of the word, to exercise any and all of the above rights.

4.3. When using the Content, the Company agrees to credit the Influencer in a manner consistent with the social media platform's standard practices, using handles, hashtags, or links as appropriate, unless otherwise agreed by both parties.

4.4. The Influencer retains moral rights to the Content, including the right to be identified as the creator. The Company agrees not to use the Content in any manner that would degrade, distort, or misrepresent the Influencer's brand, image, or artistic style. If the Company wishes to alter or modify the Content whereby Influencer's moral rights would potentially be jeopardized, the Influencer's prior written approval must be obtained.

4.5. The Influencer acknowledges that any brand-specific materials provided by the Company, including logos, trademarks, Brand Guidelines, and other proprietary materials, are the exclusive property of the Company. The Influencer is granted a limited, non-exclusive license to use the above solely to create and post the Content under this Agreement. The Influencer agrees not to use the above for any purpose outside the scope of this Agreement without prior written consent.

4.6. The Influencer guarantees that all Content created under this Agreement does not infringe on any third-party rights, including but not limited to copyrights, trademarks, or privacy rights. The Influencer shall indemnify Company against any claims or damages resulting from any unauthorized or infringing use of third-party materials in the Content. The Influencer acknowledges and accepts that the Company shall be entitled to appoint counsel acting as *dominus litis* in these proceedings, however working closely with Influencer and Influencer's counsel.

4.7. Company reserves the right to request the removal or take-down of any Content if it believes that the Content violates any applicable law, infringes on third-party rights, or does not comply with the Company's standards, each of which may evolve over time. The Influencer agrees to comply with such requests within [X] days of receiving written notice from the Company.

4.8. Upon termination of this Agreement, the Company will cease using the Content on its active digital channels unless otherwise agreed in writing [after a timeframe of X months following termination]. However, the Company may retain archived copies

of the Content for historical, record-keeping or (public) archiving purposes, which may include the inclusion of any of the Content in materials of documentary nature.

Article 5. Independence; Exclusivity & Non-Compete

5.1. Parties expressly agree that they shall be and remain independent contractors and that nothing in this Agreement shall operate or be construed to permit or authorize either Party to promise, bind, obligate, commit, make representations or warranties, encumber or put a lien on the assets, credits, receivables or business (on behalf) of the other.

5.2. The Influencer is responsible for all taxes applicable to the fees received under this Agreement. Company shall not withhold any taxes from payments unless required by law. If withholding is required, Company shall provide the Influencer with documentation of the withheld amount allowing Influencer to report such withholding to its competent tax jurisdiction.

5.3. During the term of this Agreement, the Influencer agrees to promote only the Products, Services and the Brand(s) within the agreed-upon category of [to be completed] and will not endorse or collaborate with competing brands or products within this category without the prior written consent of the Company.

5.4. The Influencer agrees that, for the duration of this Agreement and for a period of [X months/years] following its termination, they will not:

- Directly or indirectly promote or endorse any products or services that are in direct competition with the Products, Services and/or Brands;
- Collaborate with or create content for brands in the same industry as the Products or Services, without prior written consent from the Company, which shall not be unreasonably withheld or delayed.

The Influencer represents that, as of the Effective Date, there are no existing agreements or obligations that would conflict with their obligations under this Agreement. The Influencer agrees to disclose any new partnerships, endorsements, or contracts that may pose a conflict with this Agreement during the term of the engagement.

5.5 The Influencer may not delegate all or part of his obligations under the Agreement to any subcontractor or other person without the prior written approval of the Company.

5.6 Where the Company has given its written approval for all or part of his obligations under the Agreement to be subcontracted or delegated to a third party, the

Influencer shall supervise and be responsible and liable for all work and services performed by the subcontractor, and he undertakes to conclude with each subcontractor an agreement providing *mutatis mutandis* the same terms and conditions as those set out in the Agreement in accordance with back-to-back principles. At the Company's simple request, the Influencer shall provide to the Company a copy of any such agreement(s).

Article 6. Term and Termination

6.1. This Agreement shall enter into force and shall take effect as from the Effective Date, for a term of [to be completed] [months/years] following this Effective Date, unless agreed upon otherwise in writing by and between the Parties and unless terminated in accordance with the terms and conditions set forth in this Article.

The term of this Agreement shall however be automatically extended for (a) (consecutive) one (1) year term(s), unless one of the Parties notifies the other Party in writing not later than [three (3)] months prior to the expiry of the initial or further term. If the term has been extended, this Agreement continues on the same terms and conditions, subject to any written variations agreed upon between Parties.

[variant:

This Agreement will take effect as from the Effective Date and will remain in force until terminated (i) by the Company by giving the Influencer [three (3) months] prior written notice; or (II) by the Influencer, by giving Business Partner and the Business Partners at least [six (6) months] months prior written notice.]

6.2. Without prejudice to any other remedies available, without prior warning and without having to request prior authorization from a court, each Party shall have the right upon written notice to the other Party to terminate this Agreement immediately (or with effect from any later date it may define) if:

a) the other Party breaches this Agreement and fails to remedy such breach within thirty (30) calendar days of receipt of written notice from the first Party specifying the breach and requiring it to be remedied; or

b) the other Party breaches this Agreement and the breach cannot be rectified;

c) exceptional circumstances would prevent the business, professional or services relationship between Parties to exist and survive; or

d) a petition or proceeding, voluntary or involuntary, for relief under bankruptcy, dissolution, receivership, liquidation or similar lawsuit has been filed or commenced by or against the other Party, or if a trustee, custodian, receiver or similar officer is

appointed to take charge of all or part of the other Party's business, or if the other Party ceases to do business at any time for thirty (30) consecutive days; or

e) the other Party is voluntary or compulsorily wound up as a result of a merger, split or similar procedure, with exception of the procedures forming part of a restructuring of the group of which the other Party forms a part; or

f) in so far and to the extent allowed by mandatory law, the other Party becomes insolvent or is otherwise unable to pay its debts as and when they become due.

6.3. The provisions in Article 5 shall survive the termination or expiration of this Agreement for a period of [X months/years] following such termination.

Article 7. Compliance

7.1. The Influencer agrees to comply with all applicable advertising laws, regulations, and guidelines, including but not limited to those set by [local regulatory body, e.g., the Federal Trade Commission (FTC) in the United States, ASA in the UK, or other relevant authorities]. This includes adhering to transparency standards, particularly when promoting sponsored products or services, ensuring that all advertising and promotional content clearly discloses the relationship with the Brand.

More in particular, the Influencer shall include a clear and conspicuous disclosure in all promotional Content, indicating that the Content is sponsored by or in collaboration with the Brand. Acceptable disclosures include [e.g., hashtags such as #ad, #sponsored, or any other industry-accepted tags] placed prominently within the Content. The Influencer agrees that all disclosures will be easy for consumers to understand and not hidden within lengthy captions or multiple hashtags.

7.2. The Influencer agrees that all statements, claims, and representations made about the Products, Services and/or Brands will be truthful, accurate, and based on the Influencer's genuine experience and honest opinions. The Influencer shall not make any false or misleading claims about the Products, Services and/or Brands and shall avoid any statements that may be construed as deceptive or unsubstantiated by the Company.

7.3. The Influencer agrees to comply with all applicable terms, policies, and guidelines of the social media platforms used to promote the Products, Services and/or Brand(s). This includes adhering to the content standards, advertising policies, and any community guidelines of each Social Media Platform.

If the Products or Services fall under a specific regulated category (such as health, wellness, financial products, or alcohol), the Influencer agrees to comply with all

additional regulations that apply to such products. The Company shall provide the Influencer with any specific legal or regulatory guidance relevant to these products, and the Influencer agrees to follow these instructions diligently.

7.4. In the event of a breach of this Article 7, the Company reserves the right to:

- Request immediate modification, correction or removal of non-compliant Content;
- Withhold payment until the non-compliant Content is amended to the Company's satisfaction.
- Terminate this Agreement upon written notice and seek reimbursement for any associated costs, fines, or damages arising from the non-compliance.

In any event, the Influencer agrees to indemnify and hold harmless the Company from any liabilities, penalties, fines, or damages arising from the Influencer's failure to comply with advertising laws, platform policies, or regulatory requirements as outlined in this Article 7.

Article 8. Confidentiality

8.1. Parties agree to keep the terms of this Agreement confidential and, in particular, not to disclose the contents to third parties, with the exception of employees, directors and third parties bound by confidentiality obligations, who will have access to this Agreement on a need-to-know basis.

8.2 Unless it is labelled "non-confidential", the Influencer shall consider any information, document or other data given to the Influencer by the Company or by any third party pursuant to the Company's request to undertake the Influencer Activities, or (iii) any information, document or other data (including, but not limited to, Personal Data) to which the Influencer has had access pursuant to the Agreement (which shall be collectively referred to as "**Confidential Information**"), as confidential and the exclusive property of the Company or the relevant third party

8.3 The Influencer shall return to the Company, or to the relevant third party, any and all Confidential Information (including all copies and reproductions thereof) and shall destroy any notes, reports or other documents that contain Confidential Information and delete any Confidential Information (and all copies and reproductions thereof) that is in electronic form or cannot otherwise be returned to the Company, upon termination of the Agreement for any reason whatsoever or at the first written request of the Company.

Article 9. Applicable Law and Jurisdiction

9.1 The Agreement shall be governed by and interpreted in accordance with the laws of [country] without reference to its conflicts of law rules.

9.2 The Parties shall attempt to resolve any dispute or claim (contractual or non-contractual) arising between the Parties out of the Agreement by way of prompt negotiations. Any dispute arising from or in connection with the Agreement which cannot be settled amicably shall be submitted to the exclusive jurisdiction of the [Court].

Article 10. Miscellaneous

10.1 **Relationship of the Parties** – The Parties acknowledge and agree that the Agreement does not constitute either Party the agent or representative of the other, or create a partnership, an employer-employee relationship, joint venture or similar relationship between the Parties, and neither Party shall have the power to bind the other Party in any manner whatsoever.

10.2 **Entire Agreement** – The Agreement, along with its appendices, constitutes the entire agreement and understanding between the Parties, and supersedes and replaces any and all prior or contemporaneous negotiations, proposed agreements and agreements (whether written or oral), if any, in relation to its specific purpose and/or subject matter.

10.2 **Waiver** – All waivers shall be in writing. No waiver by any Party, whether express or implied, of its rights under any provisions of the Agreement shall constitute a waiver of its rights at any other time, or a waiver of its rights under any other article of the Agreement. No failure by any Party to take action with respect to any breach of the Agreement or default by another Party hereto shall constitute a waiver of the first Party's right to enforce any provision of the Agreement.

10.4 **Severability** – In the case that any article of the Agreement may be invalid, illegal or unenforceable, such article shall be interpreted so as to reflect the intent of the Parties as closely as possible, to the maximum extent permitted by the applicable law. The remaining articles of the Agreement shall remain valid and shall continue to bind the Parties.

10.5 **Survival** – The expiry or earlier termination of the Agreement for whatever reason shall be without prejudice to any Party's accrued rights, obligations or remedies as at the date of expiry or termination and shall not, for the avoidance of doubt, affect the coming into force or the continuance in force of any provisions of the Agreement

which expressly or by implication are intended to come into or remain in force by or after expiry or termination of the Agreement.

10.6 **Amendments** – Any amendments to the Agreement, including the adoption of any additional Campaign Form(s) and/or additional appendices related to data protection, shall be valid only if made in writing and signed by authorised representatives of the Parties. Should the IOC propose any amendments/additions, the Influencer shall promptly discuss those acting reasonably and in good faith, with a view to amending the Agreement accordingly.

10.7 **Burden of Proof** – In the event that the Influencer allegedly defaults in due performance or observance of any of his obligations under the Agreement or is allegedly in breach of the Intellectual Property Rights provisions of the Agreement, the Influencer shall submit evidence in rebuttal of such alleged default or breach. In the absence of evidence to the contrary, the alleged default or breach is deemed established.

10.8 **Assignment and Successors** – Neither the Agreement nor any of the Influencer's rights and obligations hereunder may be assigned or transferred without the prior written consent of the Company. The Company is at liberty to assign its rights and obligations under the Agreement to any third party, including, without being limited to, any of its Affiliates.

IN WITNESS whereof the Agreement has been executed by the duly authorised representatives of the Parties in two (2) copies on the date mentioned below (the “Effective Date”) and no other signatures are necessary to validly bind the Parties.

Made this _____ [date], in [location].

For the COMPANY: For the INFLUENCER:



International Trademark Association