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Article

Safeguarding the power of social influence in the digital age

Angela Weaver • November 03, 2023

Social media platforms like X (formerly known as Twitter), Instagram, TikTok, and YouTube have provided individuals with a publishing reach far beyond that of traditional media. One of the most widely read publication in the world, the Japanese newspaper Yomiuri Shimbun, is read by around 8.5 million people each morning[1], whereas an Instagram post from high-profile people can reach over half a billion followers. Social influencers, as well as anyone who expresses a view on social media, are exposed to the risk of litigation, and this is an issue for social media users as they gain traction by creating new engaging content quickly, often skirting controversy to stand out and attract followers. But how many budding social media influencers and commentators consider the potential legal ramifications before posting?

Social media stars can be born overnight, yet their newfound fame does not often come with the knowledge or understanding of the potential risks and pitfalls. The power of social media influencers has continued to surge, accompanied by their remarkable ability to drive profits that often outshine other marketing avenues. The global social media influencer market has more than doubled in size since 2019 and is estimated to be worth $21.1bn in 2023[2]. Many brands now routinely use social media influencers to build their profiles and sell products, especially in the fashion, beauty, travel, lifestyle, entertainment, sports, gaming, health and fitness sectors.

This growth has not gone unnoticed by regulators who are paying closer attention to this dynamic and rapidly expanding sector. The UK Competition and Markets Authority (CMA) published guidelines late last year setting out criteria relating to ads and paid promotions by influencers as the number of complaints and controversies against influencers rise year on year[3]. Likewise, the US Federal Trade Commission (FTC) published its Disclosures 101 for social media influencers[4] setting out when disclosures should be made when social influencers have a material relationship with a brand. Failing to

properly highlight that a post is a paid-for ad on behalf of a sponsor now comes with a punitive financial cost.

The social media landscape is broad and evolving, and it is easy for users to overlook the fact that the same parameters and regulations apply to social media platforms as to century-old newspapers, and libel can be alleged against content on any platform. A fact highlighted by recent high-profile cases such as the feud between British footballers' wives, Coleen Rooney and Rebekah Vardy, over alleged leaked stories from Rooney's Instagram account to the media.. The case, coined "Wagatha Christie", led to large legal expenses and reputational damage that impacted endorsement deals. Vardy was handed a £1.8m bill by Rooney in legal bills[5].

Publish in haste

While anyone who posts something defamatory on social media can be subject to court action in several regions, influencers face the added risk of being abandoned or sued by the brand that pays them and risk their contract being withdrawn. A social media influencer may have been chosen to promote a brand due to their profile and appeal among a certain demographic - if their reputation is damaged, then their value to the brand diminishes rapidly.
Other common legal infringements include breach of confidence through the inadvertent publication of private information, and breach of copyright or trademark by posting content or imagery that is owned by someone else.

Regulatory spotlight

As social media influencers increasingly promote brands, their actions on and offline can expose companies to a wide array of liabilities, such as copyright infringement, competitor disparagement, false advertising, and infringement of rights of publicity. As a result, influencers may fall into dispute with their brand partners. This can occur for multiple reasons, for example, the influencer has promoted a competitor brand despite the contract stipulating otherwise. Other examples would include the influencer saying something offensive, or confessing to an earlier misdemeanor, thus bringing the brand into disrepute. In 2021, the Advertising Standards Authority[6] (ASA) published an analysis of more than 24,000 Instagram stories. Of the 5,700 it considered to be marketing material, nearly two-thirds weren't obviously identifiable as such. The ASA described this situation as "unacceptable" and the CMA and the FTC set out regulations to push a clearer distinction between a brand-sponsored and paid-for post and an "organic" post from an individual or company.

Several well-known finance YouTubers[7], including Graham Stephan, Andrei Jikh, Jaspreet Singh and others, are alleged to be responsible for promoting the cryptocurrency exchange FTX. According to FTC guidelines for social media influencers, creators must clearly disclose when they are being paid to promote a product. Socialite Kim Kardashian also ran into trouble and settled with the FTC for US$1.26 million last year for not properly disclosing that she was paid US$250,000 to promote EthereumMax's EMAX token.

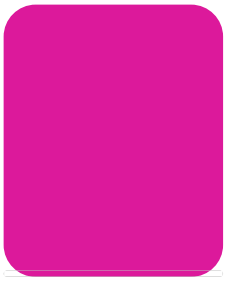
How our cover supports influencers

As risks have emerged for social influencers, a professional liability need for social influencers has taken shape, combining many features of traditional publishing and advertising policies. Policy coverage includes legal costs for defending a claim on behalf of a policyholder insured, as well as other service such as public relations support to help rebuild a damaged reputation.

Beazley provides media liability cover tailored to social influencers and content creators. A policy can include cover for claims made in the USA.

As the social media regulatory and risk environment continues to grow and evolve, media liability insurance should not be seen as a luxury by social media influencers, but as a necessary tool to provide financial and practical protection and help them navigate the ever-changing social media risk environment.

As the industry matures, influencers, platforms, agencies, and insurers must work together to professionalize and seek ways to continue to help safeguard the power of influence in the digital age.



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[1] Asian Newspaper Publishing Statistics – WordsRated

[2] https://thesocialshepherd.com/blog/influencer-marketing-statistics#:~:text=In%20recent%20years%2C%20influencer%20marketing,reach%20%2421.1B%20in%202023

[3] https://www.marketing-beat.co.uk/2023/05/16/asa-complaints-influencers/

[4] Disclosures 101 for Social Media Influencers | Federal Trade Commission (ftc.gov)

[5] Wagatha Christie - Wikipedia

[6] Advertising Standards Authority (ASA)

[7] Finance YouTubers sued over promotion of FTX

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