

Playing with Fyre: Risk Management for Social Media Influencers

Whether you have 10,000 or 1,000,000 followers; whether you're being paid or not, there are inherent risks when acting as an influencer for a brand. The Fyre Festival is a good example: influencers became unintentionally caught up in a global scandal where their own transparency and credibility was questioned.

As an influencer, how can you manage the risks of becoming the promoter and endorser of a brand which could in the future become embroiled in controversy? How do you manage the risk of damage to your own online reputation?

It is worth considering the following as part of risk management:

Due Diligence

Is the brand appropriate for you to represent? Does it really fit with your lifestyle profile online? It is recommended that you research as best you can the history of the brand and consider what issues the product/service you're being asked to promote may raise. With a new brand it may not have much of an established track record and so there will always be risk in this regard, however you can look at the people behind it.

It is recommended that due diligence on the brand and its products, as far as possible, is undertaken before you begin any promotional work.

You can also undertake due diligence on yourself: for example, how clean is your online profile? It is not uncommon for historic offensive or embarrassing social media posts to come back to haunt influencers, which can cause you reputational damage and the termination of your relationship with a brand.

An Agreement

Disputes often arise when there is a mismatch of the parties' expectations and understanding of their roles. As 'formal' as it may seem, it is therefore recommended that a written agreement, a contract, is put in place between you and the brand.

A contract acts as a clear reference point for the parties, setting out their agreed roles, expectations and responsibilities.

Your Responsibilities

Even if the brand does not volunteer detail on how it expects your commercial relationship to work, it is recommended that the following are clarified in writing in the contract (as far as possible):

- Who is responsible for content creation and how is it created;
- How the brand is shown and discussed (not being placed in the vicinity of competitor products, for example);
- The use of straplines or phrases with the product, reflecting the brand and its trade marks;
- The timing and frequency of posts; and
- The promotion of key features of the product/service.

The above is not an exhaustive list, and you will need to ensure that your natural presenting style remains as genuine and believable as possible, balanced against any promotional controls the brand wishes to put in place.

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Your Rights

It is recommended that legal advice is sought before entering into any agreement to act as a social influencer for a brand. Brands may require that you surrender certain rights or permissions as part of your role, which can affect your relationship with other brands you promote and your ability to generate further work.

Your liability under the contract should be clearly set out so you're aware what risk you are taking by promoting the product.

Regulations

Authenticity is often cited as the key to the success of influencer marketing however, influencer reputations have been damaged when there has been a lack of transparency in their product promotions.

Clearly labelled advertising is essential, and you should be aware of the relevant advertising regulations, including the CAP Code, enforced by Advertising Standards Agency (ASA), together with other consumer regulations that may apply. The consequences of breaching the rules include fines and prison, so this is serious point to consider (the rules in the UK are stricter than the US, so the behaviour of influencers across the pond should not be relied upon as guidance).

Your Liability

You will want to be clear on what is, and what is not, acceptable in respect of your behaviour, which again can be set out in a contract. Do not assume anything is implied in this regard as certain products or brands will require different standards of behaviour: shocking behaviour may be beneficial in the promotion of 'edgy' brands, but other brands require very different standards. Clarifying this at the outset can mitigate the risk of it being raised as an issue later.

A contract should provide you with a right to terminate in extreme cases, to quickly distance yourself from any future unwanted scandal around a brand/product and to mitigate any potential damage to your reputation.

Brand Value

As with any salesperson, it's important for a brand to be able to assess your value to its business. Instagram is experimenting with removing 'likes' from certain accounts, however there are other ways of monitoring value, through engagement and sales tracking technology, for example. It is important to be clear on this from the outset, so each side of the contract is aware of their obligations.

You may also be able to, by including clearly defined metrics to assess value in a contract, provide for rewards for effective promotions that boosts sales or brand recognition. The downside of this is that the brand may use those metrics as a reason to terminate the contract if performance is not as expected.

Conclusion

Whether you are embarking upon social influencing in a semi-professional or professional role, the above issues are important to consider when embarking upon influencer promotion.

If you would like to discuss the legal and practical issues raised in this article, Child & Child is able to provide clear advice in respect of reputation and commercial protection.

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William Charlesworth is a dispute resolution lawyer at Child & Child, specialising in Brand and Reputation Protection. William has experience acting in brand protection litigation for private individuals, public figures and companies.

The law relating to Brand and Reputation Protection is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such issues operate. This note is not intended as specific legal advice.

If you have any questions, or you believe you require further guidance, then please contact William Charlesworth at williamcharlesworth@childandchild.co.uk or on +44 (0) 207 201 1889.