

## **Brand Protection: Risk Management when using Influencer Marketing**

What is influencer marketing? Influencer marketing is a form of social media marketing involving endorsements and product placements from influencers. Influencers are people and organizations who possess an expert level of knowledge and/or social influence in their respective fields. Typically, you will find influencers featured on YouTube, Instagram and other social media platforms. Kim Kardashian West is one of the best-known influencers.

Influencer marketing on social media is an increasingly popular and effective form of brand promotion; the spontaneity and natural authenticity of an influencer's posts is said to be the key to its effectiveness. The rewards for a brand when using this type of marketing however do not come without certain risks: influencer scandal and the mis-promotion of products are not unusual.

How can you manage the risks of entrusting the promotion of your brand's products/services to an influencer? You may wish to consider:

### **Due Diligence**

Is the influencer the most appropriate brand representative? Look beyond their number of followers alone (followers can be bought) and confirm whether they are a right fit for your brand.

Try to determine whether the influencer has previously promoted a competing or contrasting brand or product to yours, as this can remove the persuasive element of authenticity in their posts.

It's also not uncommon for historic offensive or embarrassing social media posts to come back to haunt influencers, which can negatively affect any brands they're promoting and cause reputational damage. How much do you know about the person?

It is recommended that due diligence on the influencer is undertaken before any promotional work begins.

### **An Agreement**

Disputes often arise when there is a mismatch between the parties' expectations and understanding of their respective roles. As 'formal' as it may seem, it is therefore recommended that a written agreement (a contract) is put in place between the brand and the influencer, again before any promotional work begins.

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

### **Brand Control**

An advantage to having a contract in place is that as a brand, you can clearly set down the ground rules of how your products/services are to be promoted, including:

- Who is responsible for content creation;
- 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

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- The promotion of key features of the product/service.

The above is not an exhaustive list, and control by the brand should be balanced against the natural presenting style of the influencer so that the promotion still comes across as genuine and believable.

## **Brand Value**

As with any salesperson, it's important to be able to assess the influencer's value to the business. Whether you are simply sending product samples for an influencer to discuss, or if you are also paying them for promotion, you will want to be able to monitor and assess their value to your brand. While Instagram is experimenting in removing 'likes' from certain accounts, there are other ways of monitoring value, through engagement and sales tracking technology, for example.

A contract allows you to specify clearly defined metrics to assess value: rewards for an effective influencer who boosts sales and perhaps termination for ineffective influencer. The recent example of an Instagram influencer who failed to sell only 36 T-shirts to her 2 million followers is an example of the importance of being able to assess the return on your investment and not rely purely on follower numbers.

## **Regulations**

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

Clearly labelled advertising is essential, and the influencer should be aware of, and agrees to follow the relevant advertising regulations, including the CAP Code, enforced by Advertising Standards Agency (ASA), and other consumer regulations that apply. Professional influencers are more likely to be aware of these rules, but there should be a clear obligation in any contract to ensure compliance on the influencer's part.

The consequences for those breaching the rules include fines and prison: as a brand you will want to protect your reputation and avoid being caught up in any controversy where it may appear that you were part of a plan to deceive the public.

## **Scandal and Termination**

A contract can also set out clear guidelines on what is, and what is not, acceptable in respect of the behaviour of the influencer. 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 of behaviour.

A contract should provide for termination in extreme cases, to allow a brand to quickly distance itself from any future unwanted scandal and protect its reputation.

## **Conclusion**

Whether the influencer you wish to retain has 10,000 or 1,000,000 followers, the above issues are important to consider when as a brand, you embark upon online 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 brand and reputation 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](mailto:williamcharlesworth@childandchild.co.uk) or on +44 (0) 207 201 1889.