



In the past several years, you have likely seen a new type of advertisement on your news: a sponsored post or advertisement by a social media influencer. To a smaller business or a brand just getting off the ground, these posts may seem like a more organic or seamless way to promote a business, and the potential for growth - and exposure to a new group of customers - is great. However, using influencer marketing may have legal implications for franchisors and franchisees subject to business opportunity laws and other federal regulations. An influencer tasked with marketing a franchise or a brand may unintentionally violate these restrictions, and a franchisor or franchisee who uses a social media influencer to market its business must put clear guidelines in place.

## WHAT IS AN INFLUENCER?

An influencer usually has an established blog, a business of their own, or a substantial social media presence, and may intersperse their normal posts with posts promoting a product or service in a personal way. Influencers are often compensated for these posts via cash or free products and services, and may be compensated based on the amount of product sold through links in the post or other interest generated. Fees for these types of posts - as well as longer-term relationships between influencers and brands - can range from hundreds to millions of dollars.

## LEGAL CONSIDERATIONS FOR FRANCHISES INTERESTED IN INFLUENCER MARKETING

A franchisee who is considering using an influencer to market their business should first consider whether they are even entitled to do so at all under the terms of their franchise agreement. Many franchise agreements have clear social media policies and practices integrated into the agreement, and a franchisee may only be able to use the brand's logos and market in specified ways. If a social media policy is not already established, working with a franchisor to develop and implement a new one may also be a good way to expand the business's potential.

If the brand chooses to work with a social media influencer, it also makes sense for both a franchisee and franchisor to familiarize itself with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, which provide specific guidelines for the use of these more informal marketing channels. These guidelines generally require bloggers and influencers to disclose that a post or promotion regarding a product or service is an advertisement, and if they received compensation for the post or marketing scheme. Businesses are also prohibited from compensating bloggers or other marketers to write fake reviews of their product or service on internet review boards such as Yelp.

Finally - among many other considerations - a franchisee or franchise business working with an influencer must make sure that a social media influencer does not inappropriately offer a franchise for sale through a post or other interactions involving the brand. If a person encountering a post thinks that he or she can purchase or invest in a franchise business through one social media post - without receiving full financial information or other required disclosures - the franchise business runs the risk of violating both state business opportunity laws and Federal Trade Commission regulations. Franchise businesses must clearly direct any influencers who may be promoting a franchised brand to refer any interest potential franchisees to the already established franchise sales people at the franchisor so that proper procedures are followed.

If you are thinking of using a social media influencer to promote your franchise business or have questions about this article, contact the attorney listed below.



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