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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNBOXING THE INFLUENCE: ETHICAL AND LEGAL BOUNDARIES FOR SOCIAL MEDIA CREATORS

AUTHORED BY - AMARJA AUNDHKAR¹

ABSTRACT

The meteoric rise of social media influencers has fundamentally reshaped the media landscape, blurring the lines between entertainment and advertising. This research delves into the intricate relationship between media law and the burgeoning field of influencer marketing. Influencers wield immense power to sway consumer behavior and shape online discourse, yet the legal frameworks governing their activities remain nascent. This paper sheds light on significant legal issues germane to influencer marketing, encompassing advertising disclosure standards, consumer protection legislation, and intellectual property rights. The exploration extends beyond legal parameters, engaging in a critical examination of influencer ethics. Issues such as inauthentic promotions, the promulgation of unattainable beauty standards, and the potential for manipulation will be meticulously addressed. Furthermore, this research will investigate the impact of influencer marketing on susceptible audiences, particularly children. It will explore the ethical responsibility of influencers to promote safe online behavior. This study aims to bridge a critical gap in the legal and ethical understanding of influencer marketing. By fostering a heightened awareness of these complexities, the research offers a framework for promoting responsible influencer conduct that safeguards consumers, upholds ethical standards, and fosters a more transparent digital environment. By offering a comprehensive analysis of the legal and ethical considerations surrounding influencer marketing, this research aspires to contribute to a more responsible and transparent digital ecosystem. It seeks to empower consumers, safeguard vulnerable audiences, and establish a framework for ethical influencer conduct, ultimately fostering a healthier and more trustworthy online environment. ‘

KEY WORDS: Social Media, Transparency, Influencer marketing, legal framework, Advertising Guidelines

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INTRODUCTION

The unrelenting march of technical advancement, particularly in the field of information communication has resulted in a generational transition. Traditional ways of news and entertainment reception have given way to a more democratic information landscape. Social Media a distinguishing feature of the twenty-first century has had a significant impact on society, changing communication, information transmission and interpersonal interactions. In a democratic society, the media functions as the fourth pillar, working as a vigilant watchdog to keep those in power accountable. Individuals are now enabled by social media platforms to create their own material, serving as broadcasters, journalists and curators of narratives of their own. This phenomenon has not only enabled small businesses to communicate directly with their target customers, but it also has spawned a thriving industry: influencer marketing.

The exceptional advances in media, notably in the field of digital technologies, need to coincide with growth in our legal framework. Social Media, with its tremendous ability to affect every aspect of society – from healthcare and education to businesses and court system – creates a dynamic landscape that necessitates a rethinking of our legal concepts. In the absence of adequate scrutiny, these technologies have the potential to feed into prejudices, violate privacy rights, and undermine accountability procedures. Existing legal frameworks for social media cover a wide range of legal principles aimed at regulating various aspects of digital interaction, privacy of users, intellectual property protection and ethical conduct.

Without a doubt, advances in media technology have resulted in major increases in efficiency and convenience. However, these advantages have coincided with increase in ethical issues. Data Privacy, employment displacement and algorithm prejudice have arisen as significant concerns that must be carefully addressed. As we go forward into a future influenced by ever-changing media landscapes, the legal framework must evolve to prioritize not only efficiency, but also fairness, transparency, and the protection of fundamental human rights. This demands a change in the law to assure compliance with these ethical and legal principles, which guide the responsible growth of modern media.

UNDERSTANDING SOCIAL MEDIA INFLUENCE

The development of social media networks has profoundly changed the way marketing information is used. It can now foster, enhance or even create totally new customer demand, rather than simply marketing things. Influencer marketing a relatively new phenomenon in the digital realm takes advantage of “social media influencers”. These individuals, with large internet presence and followings, serve as trusted endorsers, resulting in higher engagement for the items or services they promote. The Word of Mouth Marketing Association describes influencer marketing as “the strategic process of identifying and collaborating with influencers to deliver targeted messages to their audience, ultimately achieving specific business objectives”.²

Social media’s popularity and use have grown dramatically during the last decade. Social Media platforms have become an irrefutable force in altering the globe. Aside from aiding communication and amusement, they have a strong influence on our beliefs, actions, and even society trends. This powerful media has a huge impact on society, serving as the principle means on conveying worldwide news and information. The dominance of social media goes far beyond information sharing, as it actively shapes public disclosure, influences elections and has an impact on mental health through concerns such as social comparison and cyber bullying. Its scope includes event organization and the facilitation of social change movements, serving as a forum for both advocacy and criticism. As a result, social media has emerged as a dominant force in today’s rapidly changing landscape.

While social media provides a plethora of chances for connection, it can also lead to unexpected consequences. Excessive reliance on these platforms might result in a paradoxical situation in which people grow progressively isolated from those closest to them. This is especially problematic for the younger generation, which makes up the majority of users. This effect manifests itself in a variety of ways, affecting people, corporations, and entire societies. Understanding the mechanisms of social media influence is critical for navigating the complicated terrain of the digital era.

One critical feature of social media influence is its potential to affect public perception. Influencers are people with large internet followings who use their platforms to push products, ideas and lifestyles. Their positive endorsements can have a substantial impact on customer choices, with research demonstrating a direct link between influencer marketing and purchasing decisions. This

² WOMMA, ‘The WOMMA guide to influencer marketing’ (WOMMA, 2017) accessed 20 March 2024, at 10.

influence is not limited to commerce. Individuals can use social media to communicate their experiences and ideas on a large scale, potentially changing how others perceive social, political and cultural concerns. Viral campaigns can increase awareness about important issues, whereas social media movements can mobilize public opinion and force real-world change.

Social Media's influence is partly derived from its ability to form communities. Social media platforms bring together people who share similar interests, resulting in echo chambers where information and viewpoints are reinforced. This can be a good influence, helping marginalized people to feel a feeling of community and support. However echo chambers can worsen social divisions. Personalization algorithms can trap users in "filter bubbles", exposing them solely to material that reinforces their pre-existing ideas. This can exacerbate polarization and prevent healthy debate.

The power of social media does not come without consequences. The edited representation of reality on social media platforms can have a harmful influence on self-esteem and mental health, especially among young people. The pressure to create an ideal online identity can exacerbate emotions of inadequacy and social comparison. Furthermore, the propagation of misinformation and "fake news" on social media is a major concern. The ease with which misleading information can be spread and amplified has the potential to distort public debate and weaken trust in reputable sources. A major fear about social media is that it has the ability to replace face to face interactions. The amount of time spent on these online platforms can be greater than that spent on important in-person interactions. This shift in communication habits has been related to an increase in mental health problems like loneliness and sadness. The Covid-19 Pandemic has intensified this tendency. Social distancing tactics required isolation, resulting in a communication gap that many people filled with digital media. To mitigate the harmful features of social media influence, a multifaceted approach is required. Individuals can develop critical thinking abilities to analyze the material they come across online. Social media networks are responsible for combating the spread of disinformation and promoting content transparency. Furthermore, media literacy education can teach people how to distinguish trustworthy information from biased or deceptive content.

The phenomenon of social media impact is complex and has far-reaching repercussions. It has the capacity to empower individuals, drive positive change, and develop a sense of community. However, its potential for manipulation, deception, and societal divisiveness must not be underestimated. As

we navigate the ever-changing world of social media, cultivating critical thinking, increasing media literacy, and holding platforms accountable are vital steps toward ensuring a more positive and responsible online environment. While social media was critical in preserving connections, its growing popularity brings new ethical and legal concerns to the forefront.

THE ETHICAL CROSSROADS OF INFLUENCER MARKETING

Influencer marketing has suddenly emerged as a prominent force in the marketing world. However, this emerging sector is not without ethical issues. The media has frequently emphasized on cases in which influencers appear to have crossed ethical lines or acted in unknown legal areas, generating the impression that the sector prioritizes profit over ethical considerations. This is similar to the public's broad distrust of marketing as a whole, with some fearing that the chase of sales will trump moral values.

One of the most prominent ethical issues in influencer marketing is the lack of transparency around sponsored content. Influencers have a responsibility to disclose any partnerships or sponsorships with brands to their audience. This disclosure should be clear and unambiguous, avoiding vague hashtags or buried mentions. Failing to do so can mislead viewers and erode trust in both the influencer and the brand.

Another key concern is the issue of inauthentic endorsements. Ideally, influencers should only promote products and services that they genuinely believe in and have personally used. Audiences trust influencer recommendations because they perceive them as authentic. When influencers promote products solely for financial gain, without regard for their own experience or the product's quality, it undermines their credibility and harms the entire influencer marketing ecosystem.

Furthermore, influencer marketing raises concerns about social responsibility. Influencers have a powerful influence on their audience, particularly young and impressionable viewers. It is important for influencers to promote products and services that are safe and ethical, and to avoid content that can be harmful or misleading. For example, promoting unrealistic beauty standards or products that prey on insecurities can have negative consequences for viewers.

As influencer marketing evolves, it is critical to address these ethical issues. Increased openness,

authenticity, and social responsibility from both influencers and corporations are critical to establishing customer trust and ensuring the industry's long-term viability.

1. Lack of Transparency

The lack of transparency is one of the most important issues confronting the rapidly growing influencer marketing sector. Deceptive advertising techniques, a long-standing issue in traditional marketing, have taken on new dimensions in the area of influencer-brand cooperation. While regulatory organizations have developed requirements for influencer disclosures, these efforts frequently fall short of providing a completely open environment. The existing standards are largely concerned with sponsored content disclosures, but the issue goes beyond a mere label.

Lack of transparent manifests itself in a variety of ways. For starters, influencers may fail to disclose sponsored content properly, causing the distinction between genuine recommendations and paid endorsements to blur. This misrepresentation erodes customer trust and reduces the credibility of influencer marketing in general. Second, there are no clear guidelines in the business for revealing the type and scope of brand collaborations. Influencers may receive free products, undisclosed incentives, or affiliate marketing commissions, which can have a substantial impact on their content if not revealed to the audience. Finally, the opaque structure of influencer marketing contracts allows for behaviors that undermine the legitimacy of endorsements. Influencers may be forced to provide unduly positive ratings and promote products they would not normally advocate, undermining consumer trust even further.

Addressing these difficulties calls for a multifaceted strategy. Regulatory organizations must design and implement stronger norms that include all areas of brand collaborations. Additionally, the influencer community must adopt ethical behaviors and prioritize openness. Finally, firms that collaborate with influencers must be held accountable for respecting ethical standards in their marketing campaigns. Only via a concerted effort to encourage openness can influencer marketing realize its full potential, which is to establish genuine connections between brands and customers based on trust and authenticity.

2. The Deceptive Purchase of Popularity

In the ever changing field of influencer marketing, an alarming practice has emerged: the fraudulent

acquisition of social media followers and engagement metrics. This unethical method, which is frequently used by emerging influencers, involves purchasing likes, comments, and shares on social media. This fictitious fame is then exploited to dupe brands into lucrative sponsorships.

The motivation for this deception is clear. Influencers rely on demonstrably high engagement to secure brand partnerships. For those struggling to gain a foothold in the industry, the allure of artificially inflating their perceived reach can be significant. However, this manipulative approach is demonstrably flawed. Brands that discover they have been misled are unlikely to collaborate again, and the influencer's reputation suffers lasting damage.

Ultimately, a focus on building a loyal and engaged audience organically fosters far greater long-term success. Influencers who cultivate genuine connections with their followers are better positioned to secure authentic partnerships and build a sustainable career. The pursuit of deceptive popularity may offer a temporary shortcut, but it ultimately undermines the very foundation of influencer marketing – trust and credibility.

3. Ethical Responsibility of Product Promotion

The promotion of any product has some level of duty, but this burden is especially great when it comes to commodities that may have an impact on public health or well-being. Influencers, in particular, have considerable potential to shape customer behavior. When an influencer promotes the use of a product that has been demonstrated to have bad repercussions such as tobacco or gambling items, the conduct crosses into unethical marketing terrain.

This ethical lapse might happen in a number of ways. To begin, influencers may downplay the proven health hazards linked with specific goods. Second they may use their power to target vulnerable demographics, such as young people, who are more vulnerable to persuasive marketing approaches. Finally, just advertising a product with known negative externalities without acknowledging these drawbacks can be interpreted as deceptive and reckless.

The ramifications of such unethical marketing can go beyond the individual influence's reputation. It has the potential to destroy public faith in the influencer community as a whole, as well as mainstream the usage of dangerous products. In the most acute situations, it can have a significant detrimental

impact on public health outcomes.

NAVIGATING THE LEGAL LANDSCAPE

The regulatory framework for influencer marketing is both intricate and constantly evolving, reflecting the ever-changing nature of digital marketing techniques. These restrictions have a fundamental purpose: to protect consumers and establish a marketplace based on equity and openness. To do this, governments around the world have built a framework of particular norms and legislation that control the behavior of both brands and influencers during promotional operations.

Within the United States, the Federal Trade Commission (FTC) establishes guidelines mandating clear and conspicuous disclosure of any significant relationship between an influencer and a brand. Across the European Union, influencer marketing is shaped by two key regulations: the General data Protection Regulation (GDPR), which governs the use of personal data and the Unfair Commercial Practices Directive, which oversees the nature of marketing communications. Similarly, other regions, such as Australia with the Australian Competition and Consumer Commission (ACCC) and Canada with the Competition Bureau, have implemented their own sets of rules and guidelines.

Influencer Marketing in India is governed by a number of legislation and guidelines for advertising, consumer protection, data privacy and intellectual property rights. A complete grasp of and respect for these regulatory criteria is required to provide transparency, protect consumer rights, and promote ethical practices in the influencer marketing space.

1. Protecting Consumers in the Age of Influence

Consumer Protection Laws in India play an important role in protecting customer's interests and rights in the context of influencer marketing. The 2019 Consumer Protection Act is the principle piece of legislation controlling this subject. This Act sets a framework for consumer rights and defines the role of businesses and influencers in promoting fair trade practices. According to these laws, influencers are required to conform the following:

Under section 2 (18) of the Consumer Protection Act 2019, the term “endorsement” in relation to an advertisement, means – (i) any message, verbal statement, demonstration; or (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or (iii)

depiction of the name or seal of any institution or organization, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement.³

Under section 2 (47) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.⁴

A remarkable shift has occurred in the Indian advertising business, indicating a dedication to transparency and customer safety. On January 20, 2023, the department of Consumer Affairs, which is part of the Ministry of Consumer Affairs, Food, and Public Distribution, published thorough guideline titled “Endorsement Know-hows!” This program seeks to ensure that celebrity endorsements and influencer marketing techniques are ethical and in accordance with the Consumer Protection Act of 2019 and its accompanying rules.

The “Endorsement Know-hows!” mandates celebrities, influencers, and even virtual influencers to make a public statement about any “material connection” they may have with the advertiser being supported. Such material links provide a wide range of benefits, such as monetary remuneration, complimentary products, contest entries, travel accommodations, media barter, rewards, or any personal, familial, or professional connections. Non-compliance with disclosure rules or the Consumer Protection Act can result in a penalty of up to Rs.50 Lakhs.

In addition, the standards promote the use of clear and concise wording in endorsements. Terms like “advertisement”, “sponsored”, and “paid promotion” are encouraged to promote clear communication. Furthermore, the criteria state that endorsers should have firsthand familiarity with the promoted items or services. This multifaceted strategy promotes transparency, builds trust, and ultimately protects customers from misleading advertising methods.

2. Examining Advertising Regulations

In conjunction with consumer protection regulations, influencers are subject to advertising standards

³ Consumer Protection Act, 2019 Section 2(18)

⁴ Consumer Protection Act, 2019 Section 2(47)

established by regulatory organizations. In India, for example, the Advertising Standards Council of India (ASCI) is a self-regulatory organization that monitors and governs advertising activities. Adherence to ASCI principles is critical for influencers to guarantee that their marketing actions meet ethical standards.

The Guidelines require influencers to acknowledge when their content is advertising and includes a financial incentive. Similar to their equivalents in other jurisdictions, the guidelines describe the requirements for such disclosures, including the proper labels to use and the criteria used to determine when disclosure is required.

Transparency is key in influencer marketing. Disclosure is required whenever there is a material link between advertiser and the influencer. This goes beyond financial compensation and includes any substantial relationship that may impact the content. Furthermore, disclosure is required regardless of whether the influencer's opinions appear objective or are wholly their own creation.

Disclosures about sponsored content must be displayed with extreme clarity and prominence to ensure that they are easily recognizable by consumers with ordinary knowledge. To accomplish this, it is critical to avoid hiding such disclosures within extended hash tag sequences. Furthermore, it is encouraged that influencers use the platform's established communication channels, as well as their own means of disclosure, to ensure maximum visibility for sponsored content information.

3. The Role of Influencer Marketing Contracts

For successful influencer marketing campaigns in India, the establishment of formal, written contracts between influencers and brands is essential. These agreements, known as influencer marketing contracts, foster transparency and establish clear expectations for both parties, thereby minimizing the potential for disputes. The allocation of responsibility for establishing contract terms in influencer marketing partnerships varies. Some influencers may present pre-defined agreements serving as a foundation for all their collaborations.

In all cases, however, Indian Contract Act, 1872 governs these contracts. Regardless of the approach, a thorough evaluation of the legal implications associated with commission-based influencer agreements is crucial for business owners. A well-drafted and enforceable legal contract outlining

clear terms can significantly mitigate potential issues within the influencer relationship. To this end, a brief overview of key considerations for such agreements is provided below:

- a) Scope of work – This section meticulously outlines the influencer’s responsibilities, including the type of content to be created, posting frequency, and designated platforms.
- b) Timeline – This section details the timeframe for content creation, submission for brand review (including any revisions), and ultimate publication.
- c) Compensation – This section clearly defines the influencer’s payment structure and timing. Additionally, it should specify any further benefits, such as complimentary products or services, they may be included.
- d) Content Ownership – This clause establishes clear ownership of the content generated for the campaign. Some brands may seek the right to utilize the influencer’s content in their own marketing materials.
- e) Confidentiality – This clause safeguards sensitive information regarding the brand or campaign by restricting the influencer from disclosing it before the official launch.
- f) Force Majeure – This clause acknowledges unforeseen circumstances beyond the influencer’s control that may hinder their ability to fulfill their obligations. It outlines acceptable actions under such circumstances.
- g) Termination – This section details specific scenarios under which either party may terminate the agreement.

4. Data Privacy and Protection in Influencer Marketing

Influencer marketing campaigns generate a significant amount of data, encompassing information about both influencers themselves and their audiences. To comply with data privacy regulations, the collection and processing of personal data must adhere to the following principles:

- a) Transparency and Purpose Limitation – Personal data must be collected for clearly defined, explicit, and legitimate purposes, and it cannot be further processed in a way that is incompatible with those initial objectives.
- b) Data Minimization – The amount of personal data collected should be sufficient, relevant, and limited to what is strictly necessary for the intended purposes of the campaign.
- c) Accuracy and Up-to-Dateness – Personal data should be accurate, and whenever necessary, kept up-to-date.

The secure handling of personal information necessitates the implementation of appropriate technical and organizational safeguards. These safeguards ensure that data is stored, processed, and transferred in a secure manner. Examples of such safeguards include data encryption, access controls, and regular security audits.

In the unfortunate event of a data breach, a pre-established plan should be in place for both parties involved. This plan should outline the notification process for relevant data protection authorities and the individuals whose data has been compromised.

5. A Look at Intellectual Property Rights for Social Media Influencers

In the realm of influencer advertising, a fundamental principle lies in respecting intellectual property rights. When incorporating copyrighted materials such as music, images, or videos into their content, influencers must ensure they possess the proper permissions and licenses. Furthermore, exercising caution regarding potential trademark infringement is paramount, particularly when utilizing brand logos or names within their posts. By demonstrating a comprehensive understanding and adherence to intellectual property laws, both influencers and the brands they collaborate with safeguard themselves from potential legal entanglements.

Social Media influencers navigate a legal landscape that includes intellectual property rights. To avoid copyright or trademark infringement, influencers must meticulously ensure they possess the necessary permissions before utilizing the creative works of other in endorsements. This extends to all creative materials; for instance, an influencer cannot include a musician's copyrighted work in a promotional video without explicit authorization.

In the marketplace, trademarks play an important role: they serve as distinguishing identifiers, allowing consumers to easily distinguish the source of goods and services given by one seller from those offered by competitors. Before using a brand's trademark, name, logo, or items in promotional videos, influencers must first obtain permission from the brand. Preventing customer uncertainty about the origin of goods and services is a fundamental element in protecting the trademark rights of others. To do this, influencers are strongly advised to disclose their legitimate ownership of the mark whenever it is utilized, or to acquire explicit authorization for its usage.

However, it is critical to remember that many influencers are also producers with valuable intellectual property rights that must be protected. Social media influencers have the capacity to both register and enforce infringements on their intellectual property. This includes the possibility to register original videos with the copyright office or obtain trademark protection for their channel's name when it is first created. Additionally, when social media influencers collaborate on brand endorsements, it is critical to create explicit parameters in a legal agreement. This protects influencers from organizations that may use their name, resources, or content in an unauthorized or unexpected manner.

CASE STUDIES

The seemingly glamorous world of influencer marketing isn't without its legal battles. While brands leverage influencer's reach to promote products, murky lines can emerge. Lawsuits have arisen from deceptive practices, with some influencers accused of misleading endorsements. In other cases, undisclosed sponsorships have left consumers feeling duped. Even the type of product being promoted can spark legal trouble. These cases highlight the evolving legal landscape of influencer marketing, where both brands and influencers must navigate a web of regulations.

1. Bethany Mota and Studio71⁵

In the year 2017, a contentious legal dispute arose within the burgeoning influencer marketing landscape. Studio71, a prominent talent management firm, filed a lawsuit against YouTube Personality Bethany Mota in the Los Angeles Superior Court. The lawsuit centered on an alleged breach of contract concerning a brand promotion campaign for a skincare company.

According to Studio71, a formal contract had been signed between the company and Ms. Bethany Mota wherein Ms. Mota agreed to market the skincare products on various social media channels under the terms of the agreement. Studio71 claims that in exchange for her endorsement, they paid Ms. Mota a large amount of money. The arrangement also included an expense-paid trip to Hawaii for Ms. Mota. This tropical location had a special purpose in the campaign, as Ms. Mota was expected to film a promotional video presenting the skincare products amidst the Hawaiian scenery. According to the lawsuit, this video was intended to release on Ms. Mota's YouTube channel, allowing her to capitalize on her large viewership. Studio71 claims that Ms. Mota failed to meet her contractual

⁵ <https://www.scribd.com/document/356873024/Studio-71-v-Mota> accessed on 28 March 2024 at 10.

commitments. The lawsuit claims that Ms. Mota did not make the promotional video with the Hawaiian backdrop and the required social media updates as stipulated in the agreement. According to Studio71, the lack of fulfillment constituted a significant breach of contract, causing them to initiate legal action.

This case demonstrates the growing complexities and potential perils in the influencer marketing industry. It emphasizes the need of carefully stated contracts that specify both parties' expectations and deliverables. This instance serves as a cautionary tale, underlining the importance of open communication and adherence to agreed-upon criteria for effective collaborations between brands and social media influencers.

2. Snapchat Inc and Luke Sabat⁶

In 2018, a public relations firm known as PR Consulting filed a lawsuit against actor and social media influencer Luke Sabat in the New York Supreme Court. The lawsuit alleged a breach of contract stemming from an agreement between Mr. Sabat and PR Consulting's client, Snap, Inc. The contract stipulated that Mr. Sabat would promote Snap's glasses through the creation of original content for social media. This content included a minimum four unique posts: one permanent post on Mr. Sabat's Instagram feed and three temporary Instagram Story posts.

The agreement further mandated that Mr. Sabat submit the content to PR Consulting for approval before publication and provide analytics data on the posts' performance. Additionally, Mr. Sabat consented to being photographed wearing the glasses as part of the promotional campaign. In return, PR Consulting agreed to compensate Mr. Sabat with a total of \$60,000 with an upfront payment of \$45,000 upon signing the contract.

However, PR Consulting contended that Mr. Sabat failed to fulfill his contractual obligations. He allegedly only created and published a single Instagram post, neglecting to submit any content for review or provide post-performance analytics. Furthermore, Mr. Sabat reportedly did not participate in the agreed-upon photo opportunity showcasing him wearing the product. While Mr. Sabat did file a response to the lawsuit, acknowledging the existence of a signed contract, he contested the claims

⁶ <https://www.scribd.com/document/392087886/Snap-Spectacles-Influencer-Marketing-Lawsuit-PRC-vs-Sabat> accessed on 28 March 2024 at 10.30.

of any breaches of its terms.

3. Fyre Festival⁷

The Fyre festival fiasco stands as a stark reminder of the pitfalls within the event planning industry. Billy McFarland, an entrepreneur with a dubious background, and rapper Ja Rule embarked on a joint venture to establish a luxury music festival in the Bahamas. Capitalizing on the immense influence wielded by social media personalities like Kendall Jenner, Hailey Baldwin, Bella Hadid, they cultivated a significant buzz for the event. They positioned it as a more sophisticated and glamorous alternative to the established Coachella festival. However, meticulously crafted promotional video showcasing idyllic amenities concealed a complete lack of logistical preparation on the ground.

Attendees who had paid exorbitant fees for the experience arrived to a scene of utter disarray. FEMA tents took the place of luxury villas, meager cheese sandwiches replaced gourmet cuisines, and a pervasive sense of chaos dominated the atmosphere. The festival's shortcomings were swiftly documented and disseminated across the internet, transforming the event from a dream vacation into a social media spectacle for all the wrong reasons.

Beyond the logistical failures, the Fyre Festival has sparked legal scrutiny surrounding the influencer marketing campaign employed to promote the event. Influencer marketing, for those unfamiliar with the term, involves collaborations between brands and prominent figures – celebrities, social media personalities with large followings, and the like – to endorse products or services. In the case of Fyre Festival, the allegation is that the influencers who promoted the event failed to disclose their financial compensation.

This omission constitutes a violation of regulations established by the Federal Trade Commission (FTC). The FTC mandates that influencers clearly and conspicuously disclose any sponsorships or endorsements in their social media posts to ensure transparency and protect consumers from potentially misleading content. The Fyre Festival debacle serves as a cautionary tale, highlighting both the importance thorough event planning and the ethical obligations within influencer marketing.

⁷ <https://www.sab.law/news-and-insights/blog/fraud-fyre-festival-consumer-protection-breach-contract-negligence> accessed on 28 March 2024 at 11.

CONCLUSION

The burgeoning landscape of influencer marketing in India necessitates a nuanced approach that prioritizes legal and ethical considerations. To ensure a successful and compliant campaign, brands and influencers must navigate a web of contractual agreements, data privacy concerns, adherence to local and international regulations, and the potential for disputes.

At the heart of this responsible approach lies the importance of clear and comprehensive contracts. These agreements serve as a vital foundation, meticulously outlining the expectations and obligations of both parties. This echoes the wisdom embedded in the proverb, “An ounce of prevention is worth a pound of cure.” A well-defined contract fosters transparency and minimizes the risk of misunderstandings, safeguarding the interests of both brands and influencers.

Transparency takes center stage, particularly when it comes to sponsored content. Openly disclosing brand partnerships fosters trust with the audience and ensures compliance with Advertising Standards Council of India (ASCI) guidelines. By prominently labeling sponsored content, influencers maintain the integrity of their recommendations and uphold ethical practices.

Furthermore, responsible influencer marketing requires meticulous attention to data privacy regulations. With the implementation of the Personal Data Protection Bill (PDP Bill) on the horizon, adherence to data security protocols becomes paramount. Influencers must be transparent about data they collect from their audience and how it is used, while brands need to ensure their influencer partnerships comply with these upcoming regulations.

Finally, a proactive approach to conflict resolution is essential. By anticipating potential areas of disagreement, brands and influencers can establish clear communication channels and outline a process for addressing disputes. This fosters a more collaborative environment and minimizes the likelihood of misunderstandings escalating into legal issues.

In conclusion, navigating the dynamic world of influencer marketing in India demands a commitment to responsible practices. Through meticulously crafted agreements and contracts, unwavering transparency, adherence to data privacy regulations and a proactive approach to conflict resolution, brands and influencers can forge successful partnerships that benefit all stakeholders – the brands, the

influencers and the ever-evolving Indian consumer base. By embracing these core principles, influencer marketing can flourish as a powerful tool for driving brand awareness, fostering audience engagement, and achieving shared marketing objectives.

