Influencers Say the Darndest Things: National Advertising Division Targets Third-Party Marketing in Recent Decisions

Published by *Kattison Avenue* | Issue 14

Spring 2025

From world-famous celebrities to teens reviewing products on TikTok, influencers continue to shape consumer perceptions. Recent decisions from the National Advertising Division (NAD) have brought attention to the challenges brands face when working with influencers and third-party advertisers. These cases serve as a reminder that brands must take responsibility for third-party content, ensuring all claims are substantiated, material connections are clearly disclosed and messaging complies with advertising standards.

Fame is not a proxy for disclosure

As part of its routine monitoring program, NAD recently evaluated social media posts by a famous comedian promoting a clothing brand in which he held an ownership stake and a financial services company for which he was a paid endorser. The comedian argued that his 177 million followers were aware of these relationships given his long-standing promotional ties. NAD disagreed, emphasizing that even a well-known figure cannot assume audience familiarity. It further found that hashtags indicating a "partnership," when placed below the fold, failed to meet disclosure standards. NAD reiterated that all material connections must be clearly and conspicuously disclosed — regardless of the endorser's fame.

When teen influencers go rogue

In another routine monitoring case, NAD considered a teen influencer's social media posts about a cosmetic brand's lash serum that included claims such as "naturally grown long lashes" and "this is for the girls who want naturally long lashes." NAD found that these express claims were unsupported. Given the influencer's age, NAD also found that the posts falsely implied the lash serum was safe for young eyes.

Although the teen influencer was not paid for the post, NAD emphasized that a material connection can still exist when free or discounted products are provided, even if no explicit endorsement is required in return. As a result, NAD advised the brand to ensure clear disclosures of these material connections and recommended removing the unsupported claims from the videos.

Instructing third parties to remove unsubstantiated claims is not enough

In response to a complaint filed by a competitor, NAD evaluated comparative and energy-saving claims made by third-party dealers on behalf of a hot tub manufacturer. The statements, which positioned the brand as a leader in energy-saving technology, were found to be unsupported.

Although the manufacturer argued that it had not authorized the claims and had asked its third-party dealers to remove them, NAD held the company responsible for ensuring the accuracy of advertising made on its behalf. The decision reinforces NAD's expectation that once a company becomes aware of inaccurate or unsubstantiated third-party claims, it must take prompt and effective action to stop their dissemination.

NAD scrutiny can invite class action litigation

At the beginning of the year, NAD reviewed an influencer's posts that used branded hashtags to promote a company's clothing products, which failed to clearly disclose the influencers' material connection to the brand. Even after revisions were made to include a disclosure such as "#gifted," NAD found the language unclear and the placement insufficient, particularly when disclosures appeared below Instagram's "More" button, requiring users to expand the caption to see them. Now, the company is facing a $50 million class action lawsuit alleging its influencers hid paid brand partnerships.

What these decisions mean for the advertising landscape

These NAD decisions reflect a broader regulatory landscape in which brands are expected to exercise meaningful control over advertising claims made on their behalf. Failure to do so, even with good intentions or unsuccessful corrective efforts, can result in unnecessary exposure. In a fast-paced digital environment where endorsements can travel far and fast, preventative diligence remains the best defense.

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