



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan
Regarding the Endorsement Guides Review
Commission File No. P204500**

May 19, 2022

Today, the Commission is voting on releasing proposed revised “Guides Concerning Use of Endorsements and Testimonials in Advertising” and publishing a Notice seeking comment on them (“Revised Guides”). These Guides tell companies how to use endorsements, testimonials, influencers, and consumer reviews in ads without deceiving consumers.

These revisions come at a time when influencer marketing is becoming increasingly prevalent and as consumers increasingly rely on online consumer reviews to decide what to buy. Reports indicate that the global influencer marketing industry is set to grow to approximately \$16.4 billion in 2022.¹ Indeed, more than 75% of brand marketers intend to dedicate a budget to influencer marketing in 2022.² Influencers who are paid, receive free product or services, or have a relationship with a brand sometimes fail to disclose that material connection, hoping to appear more authentic to consumers. Consumers’ increasing reliance on online reviews can also incentivize advertisers to harness fake reviews, suppress negative reviews, and amplify positive ones.

I want to highlight three novel aspects of these Revised Guides that strike me as especially important.

First is the Revised Guides’ guidance on platforms’ relationships with influencer marketing. Digital platforms profit from influencer marketing and should bear greater responsibility in this area.³ The Revised Guides warn that some platforms’ disclosure tools are inadequate and may expose influencers to liability or, in some instances, leave platforms themselves open to liability.

Second is the Revised Guides’ explicit guidance on consumer reviews, and specifically the discussion of how encouraging fake reviews and suppressing negative reviews can result in law violations. This guidance reflects recent enforcement actions the agency has taken—

¹ Werner Geysler, *The State of Influencer Marketing 2022: Benchmark Report*, INFLUENCER MKTG. HUB (Mar. 2, 2022), <https://influencermarketinghub.com/influencer-marketing-benchmark-report/>.

² *Id.* In addition, the global number of influencer marketing related service offerings grew by 26% in 2021 alone, reaching 18,900 firms offering or specializing in influencer marketing services.

³ Ellen Simon, *How Instagram Makes Money*, INVESTOPEDIA (March 17, 2022), <https://www.investopedia.com/articles/personal-finance/030915/how-instagram-makes-money.asp> (noting that, in 2019, Instagram generated \$20 billion in advertising revenue and that 69% of America’s marketers planned to spend most of their 2020 influencer budget on Instagram).

including a recent final order settling allegations that Fashion Nova blocked negative reviews of its products from being posted on its website.⁴

Third is the Revised Guides' warning that child-directed influencer advertising is of special concern to the Commission. Those who market to children cannot assume that compliance with these guides is a safe harbor.

The kid influencer marketplace is estimated to be as large as \$1.7 billion and is rapidly growing.⁵ This type of child-directed influencer advertising can pose a host of risks. As one recent report noted, "unless children are able to differentiate between advertising and other forms of entertainment, and grasp the persuasive intent of advertising, then they are at risk of deception. This is especially true for children under 12, whose advertising literacy—all knowledge and skills related to understanding advertising—has not yet fully developed."⁶

There is currently no clear or consistent approach to addressing the problem, and Congress and advocacy groups have called on the FTC to provide guidance on this issue.⁷ While we presently lack the full evidentiary record to support specific guidance or to propose best practices, I am eager for more input that will support more concrete action in this important area. Accordingly, in tandem with issuing the Revised Guides today, we are announcing an event to gather information on stealth advertising targeting children. The public event will be held in October and will focus on the blurring of advertising and programming content in child-directed digital media.

I am eager for robust participation at this event and will look forward to learning from the public as we consider how to move forward on this important and timely issue.

⁴ Decision and Order, *In re Fashion Nova, LLC*, No. C-4759 (F.T.C. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/1923138C4759FashionNovaOrder_0.pdf.

⁵ Agnieszka Guttman, *Kids Advertising Spending Worldwide 2012-2021, By Format*, STATISTA (April 7, 2020), <https://www.statista.com/statistics/750865/kids-advertising-spending-worldwide/>.

⁶ Miriam Rahali & Sonia Livingstone, #SPONSOREDADS: MONITORING INFLUENCER MARKETING TO YOUNG AUDIENCES 8 (2002), http://eprints.lse.ac.uk/113644/7/Sponsoredads_policy_brief.pdf.

⁷ See, e.g., Letter from Rep. Eshoo, Rep. Castor & Sen. Markey to Joseph J. Simons, Chair, Fed. Trade Comm'n (Aug. 22, 2019), https://eshoo.house.gov/sites/eshoo.house.gov/files/wysiwyg_uploaded/Eshoo-Markey-Castor%20follow%20up%20letter%20to%20FTC%20re%20predatory%20online%20ads%20%28002%29.pdf; Letter from Sen. Blumenthal, Sen. Markey, and Rep. Eshoo to Joseph J. Simons, Chair, Fed. Trade Comm'n (Dec. 6, 2019), <https://www.blumenthal.senate.gov/imo/media/doc/2019.12.06%20-%20FTC%20-%20Child%20Influencers.pdf>; Letter from Laura Smith, Legal Director, Truth in Advertising, Inc. & Bonnie Patten, Executive Director, Truth in Advertising, Inc. to Andrew Smith, Director, Bureau of Consumer Prot., Fed. Trade Comm'n & Mary Engle, Associate Director, Div. of Advertising Pracs., Fed. Trade Comm'n (Aug. 28, 2019), https://truthinadvertising.org/wp-content/uploads/2019/08/8_28_19-ltr-to-FTC-re-Ryan-ToysReview_Redacted.pdf.