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**So You Think You Want To...**

work with a social media influencer



**Consumer brands are increasingly turning to creative methods to engage with customers and social media influencers have emerged as a highly effective strategy.**

These influencers possess the unique ability to captivate a large yet targeted audience, establishing themselves as essential players in today's digital marketplace. By producing authentic and customized content that resonates with their followers, social media influencers offer a more organic and less intrusive alternative to traditional advertising. Moreover, this strategy is cost-effective and efficient, as influencers are responsible for both content creation and distribution.

However, the growing power of influencers has led to increased regulatory scrutiny over how that power is used. Instances of abuse include:

- a lack of transparency regarding campaign conditions
- manipulation of metrics to inflate influence
- undisclosed paid endorsements
- fake association with brands

Additionally, due diligence on an influencer's background can be complex. These issues have highlighted the urgent need for clearer regulations and standards within the influencer industry to protect consumers and the integrity of the digital advertising space. Adherence to standards, compliance with existing regulations, and implementation of clear and transparent policies on the use of social media influencers are key to protecting a brand's reputation.



# What is the legal landscape?

Regulation of influencer marketing is complicated due to the fragmented legal framework. Regulations vary significantly across different regions and are often based on existing laws, including those originally designed for more traditional forms of advertising. Here, we look at some of the different approaches:



EU



## Current legislation/guidance

The European Commission recently issued the “5 Key Principles on Social Media Marketing Disclosures”<sup>1</sup>. The European Commission has also created an “Influencer Legal Hub” providing resources for anyone operating as a social media influencer. However, a harmonized and dedicated set of regulations is still lacking.

## Upcoming...

Initiatives are underway at the EU level to create a more comprehensive set of guidelines. However, EU countries are also developing their own legal frameworks to address specific concerns and challenges raised by the influencer industry. This patchwork approach reflects the diverse perspectives on the best way to manage and oversee the fast-evolving landscape of social media influence.

See [Navigating influencer collaborations in select jurisdictions](#) for examples of developing French, Italian, and Spanish legislation and enforcement actions.



UK



## Current legislation/guidance

Social media marketing is covered by a patchwork of laws, codes and guidance, including the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code). The CPRs have very broad application and cover the promotion of products to consumers, including social media influencer marketing. The CPRs are enforced by the UK Competition and Markets Authority (CMA) and Trading Standards with sanctions ranging from enforcement action such as issuing cautions or requiring undertakings, through to criminal prosecutions and investigation. The CAP Code covers non broadcast influencer advertisements where (i) the influencer receives some form of payment and (ii) the brand has some form of editorial control.

## Enforcement

The CAP Code is enforced by the UK Advertising Standards Authority which has more limited powers and usually acts through naming and shaming campaigns as well as requesting the removal of advertisements. However, the ASA is warning of escalation to Trading Standards and fines in the event of repeated breaches by influencers.

<sup>1</sup> [https://commission.europa.eu/document/6099530c-b21f-4f69-87b3-0681a2a63650\\_en](https://commission.europa.eu/document/6099530c-b21f-4f69-87b3-0681a2a63650_en)

<sup>2</sup> [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub\\_en#european-consumer-law-and-influencer-marketing-an-introduction-to-the-influencer-legal-hub](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en#european-consumer-law-and-influencer-marketing-an-introduction-to-the-influencer-legal-hub)

<sup>3</sup> So You Think You Want To... work with a social media influencer

# What is the legal landscape?



## CHINA



### Current legislation/guidance

While there is no overarching legislation specifically targeting influencer marketing in China, there are general provisions outlined in the PRC Advertising Law and the Administrative Measures for Online Advertising.

China has guidelines governing livestreaming, which is a popular form of marketing in China. These include the Administrative Measures for Livestreaming Marketing (for Trial Implementation), the Code of Conduct for Livestreaming Hosts, the Code of Conduct for Livestreaming Promotion, the Guiding Opinions on Strengthening Standardized Management of Online Livestreaming, and the Guiding Opinions on Strengthening the Regulation of Livestreaming Marketing Activities.

Guidance on celebrity endorsements, such as the Guiding Opinions on Further Regulating Celebrity Endorsement Activities, is also available. Furthermore, livestreaming hosts should avoid endorsing negative trends like extreme consumerism and should exhibit civilized and appropriate behavior that aligns with the public's aesthetic taste and appreciation.



## HONG KONG



### Current legislation/guidance

There is no legislation or guidance specifically addressing influencer marketing in Hong Kong. Instead, influencer marketing is generally regulated under the Trade Description Ordinance (Cap. 362), which applies to all goods and services offered in Hong Kong, with a few exceptions, and which generally prohibits false or misleading trade descriptions in relation to these goods or services. Additionally, the making of false statements by influencers may also lead to claims brought under the Misrepresentation Ordinance (Cap. 284).



## BRAZIL



### Current legislation/guidance

When dealing with influencers and ads in general, the Brazilian Consumer Defense Code (CDC) forbids: (i) abusive advertisements, which are ads that are discriminatory in nature, or that incite violence, explore fear or superstition, or take advantage of a child's lack of judgment or experience, disrespect environmental values or may cause the consumer to behave in a way that will bring harm to consumer health or safety; and (ii) misleading advertisements, which include information or public communication that is entirely or partially false or is in any way, even through omission, capable of inducing a consumer to make a mistake regarding the nature, characteristics, quality, quantity, properties, origin, price, and any other information about products and services.

Other jurisdictions in Latin America have specific rules defining abusive and misleading advertisements that are prohibited.

CONAR (Brazilian Advertising Self-Regulation Council) has a specific Guide that contains rules and definitions applicable to advertising involving influencers. See further discussion at [Select Jurisdictions](#).



# What is the legal landscape?



U.S.



## Current legislation/guidance

In the U.S., the Federal Trade Commission (FTC) released the "Guides Concerning the Use of Endorsements and Testimonials in Advertising," which it updated in June 2023. It also recently updated its business guidance, "FTC Endorsement Guides: What People are Asking." While these are merely guidance and not law, they illustrate what sort of practices the FTC will find to be deceptive and actionable under its FTC Act. The civil penalties that the FTC can levy are very high (USD 51,744 per violation in 2024) and a single advertising campaign can give rise to many violations. In addition to the FTC in the U.S., there are other state and federal regulators, voluntary organizations, watchdog groups, consumers and competitors looking at these advertising campaigns. Under the FTC guides, an endorsement is not limited to a verbal statement but may include tags in social media posts, amongst other forms.

## Enforcement

The FTC has been extremely active in the social media influencer advertising area, particularly in requiring that disclosures regarding the relationship between the influencer and the company whose products or services are being advertised are clear and conspicuous. This means that disclosures must not be difficult to miss, must be easily understood, and should be "unavoidable." The FTC requires companies to monitor their social media influencer programs and educate their influencers on the need to ensure that their statements are not misleading and to disclose any material connections. Companies must also take action to catch, remedy, and prevent non-compliance.

**Fashion, beauty & gaming  
are the most popular niches  
for influencer marketing**

[20 Surprising Influencer Marketing Statistics | Digital Marketing Institute](#)

Explore some examples from [select jurisdictions](#) to illustrate the varying approaches to enforcement, case law, and developing legislation.

Despite the divergence in approaches, there are some general trends around transparency, disclosures, and best practices. See our [Checklist](#) for practical guidance.

# AI social media influencers: Opportunities and challenges

Social media influencers are not always “real” people. AI influencers are computer-generated characters created using advanced computer graphics, artificial intelligence, and sometimes motion-capture technology. These AI influencers can post content, interact with real users, and even promote brands just like human influencers. The trend of AI influencers is rapidly growing due to technological advancements that make them more realistic and capable of direct interaction with their followers and consumers.

For brands, AI influencers offer several advantages:

## Cost effectiveness

AI influencers represent a revolutionary shift in content creation. Unlike human influencers, they aren't bound by physical limitations such as rest or travel. Brands can collaborate with these digital entities without the complexities of labor law compliance associated with human talent.



## Tailored communication

Leveraging advanced AI technology, these influencers can adapt seamlessly to diverse cultures and create content across multiple languages with remarkable efficiency.



## Advertiser's control

Brands fully control AI influencers, which mitigates the risk of human influencers' fallibility and the possibility of breaching corporate expectations. As such, AI influencers can be a great way to ensure brand consistency and integrity.



## Advertiser's reputation

AI influencers can also represent a way of indicating to consumers that the brand is innovative and generate interest and engagement from those curious about this novel form of interaction.



However, there are downsides. AI influencers may lack the genuine personality and emotional depth that “real” influencers bring to their audience. Additionally, consumers might not always realize they're interacting with non-human entities, potentially leading to concerns about the transparency and authenticity of the campaign. Lastly, although the technology is advanced, it is not flawless and therefore can result in unnatural interactions or responses that may alienate users.



# What are the risks involved?

Ensuring that a social media influencer campaign stays on track is crucial for brand owners due to the significant risks they may face, impacting both reputation and financial performance. These risks include:



## REPUTATION

Brands can suffer from significant reputational damage if the influencer engages in controversial or offensive behaviour. The public may not be able to distinguish between the influencer's actions and the brands' values and mere association can negatively impact a brand.



## DISTRUST

Consumers value authenticity; therefore, if a campaign feels forced or insincere, it can erode consumer trust.



## EFFECTIVENESS

It is difficult to measure the direct impact of a social media influencer campaign on sales and conversions as the influencers' metrics (such as likes or followers) can often be deceptive or misleading.



## LIABILITY

Non-compliance with legal requirements (such as disclosing paid partnerships or campaign conditions) can result in penalties for both influencers and brands. Liability issues also harm a brand's reputation.



# Risk mitigation checklist

Brands launching a social media influencer campaign should consider the following:

## 1 Check the influencer's background

Brands should undertake thorough due diligence before engaging an influencer to ensure alignment with its marketing goals and brand ethos. Brands should:

- research the values and background of the influencers and ensure that they have not been involved in controversies
- check their past content for consistency, engagement rates, and quality assessments
- consider authenticity, professionalism, and past collaborations

## 2 Conclude written agreements with influencers

Brands should ensure that agreements are in place with influencers. These agreements should:

- outline clear terms on content requirements (see below)
- clearly indicate the legal requirements that may apply (i.e., such as indicating when the content is an ad). When going global, ensure that non-country-specific advertising (especially in English) complies with the strictest regulations (commonly US, UK, and EU)
- obtain warranties from the influencers
- specify the level of control of the brand on the content
- outline the payment terms
- set out the warranties, including on third-party rights
- clearly outline the content ownership rights, including the right to use the campaign upon termination of the agreement
- provide clear guidance or prohibition on comparative advertising
- outline liability including agreed position regarding AI generated content
- provide specific terms to avoid implying an employment relationship - such as confirmation that there is no entitlement to employment benefits



# Risk mitigation checklist

## 3 Brief the influencer on the content strategy

It is key for brands to provide the influencer with content strategy including the following:

- types of posts (video, stories, static posts)
- social media chosen for the campaign
- language
- campaign goals
- number, frequency, and timing of such campaigns
- marketing messages and content requirements
- agreed position on AI generated content
- clear instructions regarding tagging and brand association to ensure transparency around relationship

These requirements should be detailed in an agreement



## 4 Determine the audience

Brands should strategically assess the target audience for their intended campaign by analyzing consumer profiles, interests, and behaviors



## 5 Children

Be cautious when influencers target or are popular with children. Digital and social media marketing communications aimed at children are subject to more restrictions and must be age-appropriate (e.g., in some countries, influencers who are popular with children cannot promote food and drinks that are high in fat, salt and/or sugar). Brands contracting with child influencers should also ensure compliance with any protective laws



## 6 Livestreaming

Assess whether the campaign involves live streaming, and if so consider if additional regulation applies



## 7 Monitor the campaign

After the campaign launches, monitor content and compliance. Support influencers as needed and track performance using analytics tools (e.g., engagement rates and conversions). Also monitor social media generally for influencers making fake or disingenuous associations with your brand to portray legitimacy with consumers or other potential sponsors





# Navigating influencer collaborations in select jurisdictions

The approach to social media influencers is not globally harmonized. Here, we examine some specific examples in different jurisdictions to illustrate the different approaches.



## FRANCE: Developing legislation

The French Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF) closely scrutinized the activities of 50 influencers and revealed that 60% of these influencers were in violation of existing laws and liable for misleading commercial practices. As a result, the French Parliament unanimously passed a law aimed at regulating influencer marketing ("Law").

The Law defines "commercial influence" and "influencer agent" activities and establishes legal requirements for contracts between influencers, agents, and advertisers. Additionally, protective provisions are in place for influencers under the age of 16.

The Law further requires influencers to clearly, legibly, and unmistakably display the commercial intent of publications by displaying the words "Advertising" or "Commercial collaboration" and to inform their audience about the use of retouched photos or videos or content created by AI.

The Law prohibits the promotion of certain goods and services, considering, for instance, their potentially dangerous character as is the case for cosmetic surgery or medicine. Moreover, the Law confirms that the advertising rules in force in France fully apply to social media influencers.

The Law also reiterates the platform obligations set out in the European Digital Services Act. Failure to comply with the requirements and prohibitions set out in the Law is likely to give rise to significant penalties, including criminal sanctions.

The Law has yet to be fully implemented as several necessary decrees still need to be enacted. This delay is notably caused by the non-compliance of certain provisions of the Law with EU regulations, including its territorial scope of application. Crucially, the decree expected to set the threshold of money or compensation received by an influencer to trigger the application of the Law has not yet been enacted.

While the Law is not yet fully implemented, it provides valuable rules that influencers and brands can adopt as safeguards. In parallel, the DGCCRF continues to monitor and issue sanctions against influencers in case of non-compliance with advertising rules. Moreover, the French Professional Regulatory Authority has set up an online training course, and the French Minister of Economy released a guide of best practices in December 2023<sup>3</sup>.



## ITALY: Competition Authority cracks down on misleading influencer practices

The Italian Competition Authority (AGCM) has intensified efforts to monitor social media influencers. It recently concluded investigations related to charity campaigns promoted by a globally renowned influencer, Chiara Ferragni. The AGCM found that Ferragni induced consumers to incorrectly believe that the proceeds of the sales of certain cakes and Easter eggs would be donated to charity. Companies involved in the campaign have been fined EUR 1 million. In the context of the second investigation, AGCM accepted commitments proposed by Ferragni's companies, which included a payment of EUR 1.3 million to a children's charity over a period of three years.

On 10 July 2024, the AGCM initiated six new investigations against influencers engaging in practices detrimental to consumers and launched four moral suasion actions against other influencers. The AGCM's efforts are aligned with their objectives of preventing influencers from conveying misleading messages that could influence consumer behavior and enhancing transparency by ensuring that influencers disclose the commercial nature of advertising campaigns when promoting brands.

<sup>3</sup> [https://www.economie.gouv.fr/files/files/2023/Guide\\_bonne\\_conduite\\_influenceurs\\_createurs\\_contenus.pdf?v=1703262476](https://www.economie.gouv.fr/files/files/2023/Guide_bonne_conduite_influenceurs_createurs_contenus.pdf?v=1703262476)



# Navigating influencer collaborations in select jurisdictions



## SPAIN: Regulation governing influencer advertising has just entered into force

The Spanish Government conducted a study that found over 70% of Spanish influencers not adhering to European regulations on unfair commercial practices. Recognizing that existing regulations on unfair competition were inadequate in preventing misleading practices, Spanish authorities enacted specific pieces of legislation to address misleading communications by influencers. Notably, these include Law 13/2022, of 7 July 2002, known as the General Law on Audiovisual Communication (GLAC) and Royal Decree 444/2024, of 30 April (RD 444/2024).

According to RD 444/2024, "users of special relevance" (USR) are influencers who meet both the audience and significant income requirements:

- **Audience requirement:** the service reaches at some point in the previous calendar year a number equal to or greater than 1 million followers in a single video-sharing service or a number equal to or greater than 2 million followers, on an aggregate basis, in all video sharing services in which it carries out its activity and, additionally, has published a number equal to or greater than 24 videos through such platform.
- **Significant income requirement:** significant income is considered to be the gross income accrued in the immediately preceding calendar year equal to or greater than EUR 300,000 derived exclusively from the activity of the users in the set of video-sharing services through the platform they use.

From 2 July 2024, USRs must comply with the following obligations regulated in the GLAC:

- **Regarding advertising:** (i) USRs must clearly distinguish between advertising and editorial content; (ii) they are prohibited from making subliminal and covert advertising that violates human dignity, encourages discrimination, or portrays women in a vexatious or discriminatory manner; (iii) Advertising for tobacco, medicines, alcohol specifically aimed at minors, substances associated with physical performance enhancement and professional success, and gambling is not allowed; (iv) USRs must refrain from advertising content that could cause physical, mental or moral harm to minors.
- **As regards the protection of minors:** USRs must adhere to the following obligations using the video platform tools available to them: (i) Provide clear and unambiguous information about the content that may be harmful to the physical, mental, or moral development of minors. This can be done through content descriptions, acoustic warnings, or visual symbols (ii) For pornographic or violent content, create a separate catalog, and implement parental control mechanisms or digital encryption systems.



## UK: ASA tackling non-compliance

In June 2021, the ASA launched a website publicly naming social media influencers who were repeatedly breaking the rules under the CAP Code. As well as being problematic for the influencers, this can be useful for brands wishing to work with influencers to check whether they are listed. The ASA has since launched Instagram campaigns further highlighting repeated breaches by influencers and has stated it is considering working with social media platforms to have non-compliant influencers removed. The ASA also reported in May 2022 on how it is using AI to identify and determine non-compliance with the CAP Code by influencers and brands.



# Navigating influencer collaborations in select jurisdictions



## BRAZIL: Self-regulation

The Brazilian advertising industry is self-regulated by CONAR (Brazilian Advertising Self-Regulation Council), which is a non-governmental organization aimed at promoting free speech and defending the constitutional rights of advertising. Although not a governmental authority, CONAR's decisions regarding advertising are highly respected by the industry and even by Brazilian courts. CONAR created and published the Brazilian Code of Self-Regulation of Advertisement (CBAP). This is not a law but a conduct code establishing ethical values and standards widely accepted by the industry. In addition, Federal Decree No. 2.181/1997 provides that the consumer authorities must consider the market practices of the industry in order to assess and impose penalties (Article 14-A).

CONAR has a specific [Guide](#) (in English) that contains rules and definitions applicable to this type of advertising involving influencers. Advertisers and influencers need to comply with certain obligations regarding the posts' identification, form, engagement, wording, and hashtags, among others. One example is the need to identify the ad as "paid content" with a hashtag.



## CHINA: Lack of transparency

One area of regulatory enforcement in social media marketing involves online advertisements that lack a clear indication that they are indeed advertisements. Labeling of online advertisements is a requirement under local law.

For instance, in August 2023, a restaurant invited an influencer to promote its dishes on Douyin (China's video-sharing platform). The influencer created a short video for the restaurant and promoted the restaurant's meal and service, which included a purchase link to the restaurant's Douyin account. As the promotional content did not clearly indicate that it was an advertisement, the influencer was imposed an administrative fine of RMB 5,000 (approx. USD 690).

This aligns with the "Guidelines for Regulatory Enforcement concerning the Identifiability of Internet Advertising" (Draft for Comment) released by the State Administration for Market Regulation in August 2023, which seeks to enhance the identifiability of online advertisements to protect consumer interests.



## HONG KONG: Allegations of fraud by social media influencers

In September 2023, Hong Kong witnessed a high-profile case involving social media influencers' promotion of an unlicensed cryptocurrency exchange platform. This platform actively utilized social media influencers to promote its products. However, these influencers made false or misleading statements on social media to suggest that the platform had applied for the required license from the Securities and Futures Commission (SFC) of Hong Kong, when, in reality, no such application had been made. In response, the SFC requested these influencers to cease promoting the platform. Additionally, the SFC issued a public announcement cautioning the public to be skeptical of investment advice shared on social media platforms. Certain influencers involved in this case were subsequently arrested on suspicion of conspiracy to commit fraud.



# Navigating influencer collaborations in select jurisdictions

“According to research, 3% of consumers would consider buying a product in-store if promoted by a celebrity, compared to 60% for an influencer.”

[20 Surprising Influencer Marketing Statistics | Digital Marketing Institute](#)



## U.S.: FTC actions

Recent action by the FTC shows that even disclosing that a posting has been paid may not be enough if it is not clear who the sponsor of the post is.

- Both advertisers and influencers have an obligation to disclose material connections. Advertisers need to remind their influencers of the need to make clear and conspicuous disclosures.
- Consumers should be able to notice the disclosures easily without having to search for them. Disclosures hidden within lengthy hashtags, those that necessitate clicking, those displayed in low-contrast fonts, or those truncated by Instagram are insufficiently conspicuous.
- Disclosures in videos may need to be audible, visual, or both.
- Advertisers and influencers should not rely solely on platforms' disclosure tools. This doesn't mean that influencers cannot use those tools, but the disclosures are more likely to be more effective when used in conjunction with other, clearer disclosure forms.
- Influencers should clearly identify the sponsor of their posts. In some instances, the abbreviations and hashtags might not be understandable to consumers.



A hand holding a smartphone with social media icons floating around it. The background is a dark purple gradient with various social media icons like hearts and thumbs up scattered throughout. The hand is holding the phone horizontally, and the screen is lit up.

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