



August 25, 2016

VIA OVERNIGHT MAIL AND EMAIL

Jessica Rich, Director, Bureau of Consumer Protection
Mary Engle, Associate Director, Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

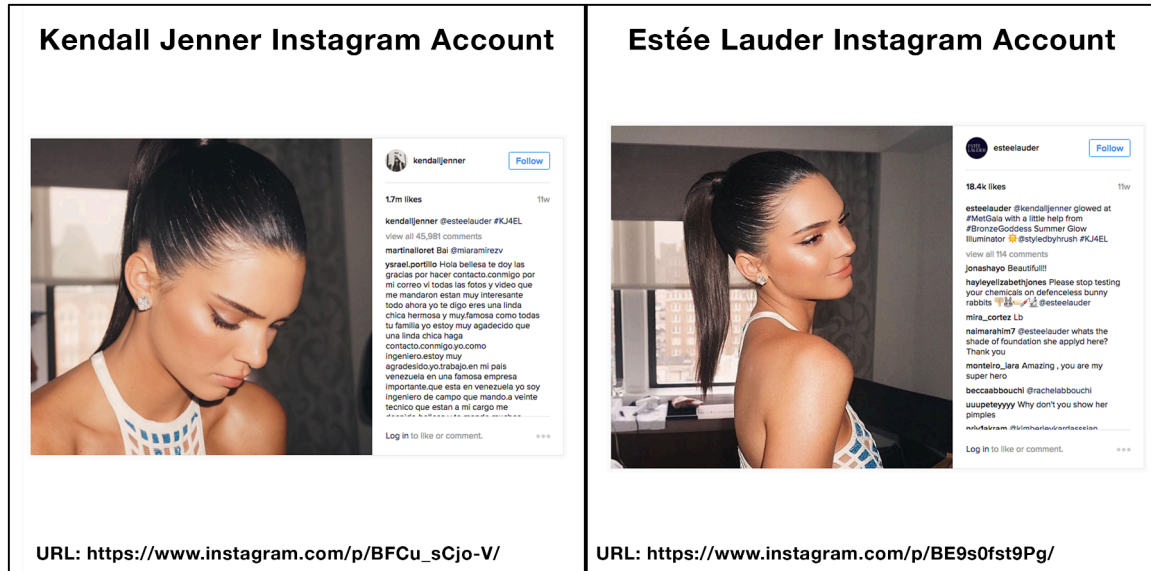


Re: Deceptive Native Advertising by the Kardashian/Jenner family

Dear Ms. Rich and Ms. Engle:

I write to inform you of the findings of a recent Truth in Advertising (“TINA.org”) investigation of marketing used by members of the highly-publicized Kardashian/Jenner family. Specifically, TINA.org reviewed the Instagram accounts for Kim Kardashian-West, Khloe Kardashian, Kourtney Kardashian, Kylie Jenner, and Kendall Jenner and found a plethora of posts that do not clearly or conspicuously disclose the individuals’ material connections to the companies featured or promoted in the posts or that the posts are advertisements as is required by law.¹ The companies sponsoring such posts include, but are not limited to, Balmain, Calvin Klein, Inc., de GRISOGONO, Estée Lauder, Inc., Fit Tea, Foxy Locks Ltd., Jet Lux, JetSmarter, Inc., Karl Lagerfeld™, Lorraine Schwartz, LuMee, LLC, Lyfe Tea, MAAZ Products, Inc., MANGO, Manuka, Mint Swim, MISBHV, Moschino, S.p.A., MVMT Watches, OUAI Haircare, Porto Brazil, Puma, Pure Leef, Revlon (for Sinful Colors), Revolve Clothing, Roberto Cavalli S.P.A., SecretCloset, Stein Diamonds, SugarBearHair, The Sugar Factory, Tokyo Stylez, Waist Gang Society, and Waist Trainer.

By way of example, Kendall Jenner posted an Estée Lauder ad on her Instagram account without indicating that it was an advertisement:²



TINA.org originally collected over 100 examples of such transgressions, compiled in a database that is available at <https://www.truthinadvertising.org/kardashianjenner-database/>.

Based on this evidence, we contacted representatives of the Kardashian/Jenner family, as well as the companies at issue, on August 17, 2016 notifying them of TINA.org’s findings and asking that they remedy the deceptive marketing immediately.³ TINA.org gave them a week to correct the issues by clearly and conspicuously disclosing that all applicable posts – past, present, and future – are paid advertisements or the result of material connections between the Kardashian/Jenner individuals and the companies featured in the posts, before forwarding this issue to your attention.

Soon after TINA.org’s August 17 warning letter, changes were made to some of the posts in TINA.org’s database, including, for example Kylie Jenner’s and Khloe Kardashian’s Fit Tea and SugarBearHair posts, by adding #ad at the beginning of the captions. More specifically,

- 21 of the 108 posts in TINA.org’s sampling were corrected to include #ad at the beginning of the caption;⁴
- 6 of the 108 posts were edited to include an ad hashtag at the end of the caption;⁵
- 4 of the 108 posts were removed from publication.⁶

However, as of this morning, August 25, 2016, the vast majority of the posts in TINA.org’s database (75 out of 108) remain unchanged,⁷ while two were insufficiently edited by adding #spon at the end of the post captions.⁸

The willingness of the Kardashians/Jenners to alter their Instagram posts endorsing companies such as SugarBearHair suggests they would also fix other similarly deceptive posts if permitted to do so by the other companies they endorse. As such, it is apparent that the issue is with the companies, who continue to flagrantly ignore the law. An attorney for the Kardashian/Jenner women has indicated that they are “working diligently to fix the items in the database either by inserting #ad or taking down the link for older posts” and has represented that they will make every effort to ensure that all future posts will include clear and conspicuous disclosures where appropriate.⁹

It is also worth noting that since warning the companies and Kardashian/Jenner women of this deceptive marketing issue, TINA.org has catalogued over 20 more ads disguised as regular Instagram posts that lack disclosures, all of which have been added to TINA.org’s database. These recent findings highlight that this deceptive marketing tactic is widespread and an investigation into all applicable social media posts – not just TINA.org’s sampling – is warranted.

TINA.org therefore urges the FTC to commence an investigation into all of the Kardashians/Jenners’ social media posts, take appropriate enforcement action against those companies and individuals found to be violating the law, and ensure that all future social media posts promoting companies are properly and clearly labeled as advertisements.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

Cc via email: Kris Jenner
Michael Kump, Esq.

Companies: Balmain, Calvin Klein, Inc., de GRISOGONO, Estée Lauder, Inc., Fit Tea, Foxy Locks Ltd., Jet Lux, JetSmarter, Inc., Karl Lagerfeld™, Lorraine Schwartz, LuMee, LLC, Lyfe Tea, MAAZ Products, Inc., MANGO, Manuka, Mint Swim, MISBHV, Moschino, S.p.A., MVMT Watches, OUAI Haircare, Porto Brazil, Puma, Pure Leef, Revlon (for Sinful Colors), Revolve Clothing, Roberto Cavalli S.P.A., SecretCloset, Stein Diamonds, SugarBearHair, The Sugar Factory, Tokyo Stylez, Waist Gang Society, and Waist Trainer.

¹ See FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR § 255.5, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>;

FTC's .com Disclosures: How to Make Effective Disclosures in Digital Advertising, March 2013, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>;

In the Matter of Lord & Taylor, LLC, Docket No. C-4576, May 20, 2016 Decision and Order, available at <https://www.ftc.gov/system/files/documents/cases/160523lordtaylordo.pdf>;

In the Matter of Deutsch LA, Inc., Docket No. C-4515, Mar. 24, 2015 Decision and Order, available at <https://www.ftc.gov/system/files/documents/cases/1503deutschdo.pdf>.

² Based on communications we had with an attorney for Estée Lauder, it appears that the company is taking the position that “#KJ4EL” is a reasonable and sufficient disclosure to alert consumers that they are viewing a sponsored post.

³ TINA.org's August 17, 2016 warning letter is available at https://www.truthinadvertising.org/wp-content/uploads/2016/08/8_17_16-ltr-from-TINA-to-K_Jenner-and-M_Kump_Redacted.pdf. TINA.org had some difficulty finding contact information for executives at each company identified in our sampling. For this reason, the August 17, 2016 warning letter was sent to some of the companies' info or press email accounts rather than individual executive accounts. In addition, some companies at issue – including Moschino, S.p.A. - were not identified by TINA.org until recently (i.e., after August 17) so they did not receive the warning letter until today.

⁴ The 21 corrected posts are:

- Three (3) Kylie Jenner Fit Tea posts
- Three (3) Kylie Jenner SugarBearHair posts
- Two (2) Kim Kardashian Secret Closet posts
- One (1) Khloe Kardashian Foxy Locks post
- Four (4) Khloe Kardashian Waist Gang Society posts
- Five (5) Khloe Kardashian Fit Tea posts
- Two (2) Khloe Kardashian SugarBearHair posts
- One (1) Khloe Kardashian Pure Leaf post

⁵ These six edited posts are:

- One (1) Kylie Jenner Waist Gang Society post (#ad at end of caption)
- Five (5) Kylie Jenner Puma posts (#pumaad at end of caption)

⁶ The four posts that were removed from publication are all Fit Tea posts (two from Khloe Kardashian's Instagram account and two from Kourtney Kardashian's Instagram account).

⁷ The 75 unchanged posts as of this morning are:

- Nine (9) Kylie Jenner Puma posts
- Two (2) Kylie Jenner MISBHV posts
- Three (3) Kylie Jenner Secret Closet posts
- One (1) Kylie Jenner Stein Diamond post
- One (1) Kylie Porto Brazil Swim post
- One (1) Kylie Jenner Maaz Products post

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- Five (5) Kylie Jenner Tokyo Stylez posts
 - Six (6) Kylie Jenner Balmain posts
 - Eight (8) Kylie Jenner Sinful Colors posts
 - One (1) Kylie Jenner Waist Trainer post
 - Three (3) Kylie Jenner Moschino posts
 - Three (3) Kylie Jenner Waist Gang Society posts
 - Two (2) Kylie Jenner Pure Leef posts
 - One (1) Kendall Jenner Mango post
 - One (1) Kendall Jenner Secret Closet post
 - One (1) Kendall Jenner Karl Lagerfeld post
 - Two (2) Kendall Jenner Estée Lauder posts
 - Three (3) Kendall Jenner Calvin Klein posts
 - Two (2) Kim Kardashian JetSmarter posts
 - Six (6) Kim Kardashian Lumee posts
 - Two (2) Kim Kardashian deGRISOGONO posts
 - Two (2) Kim Kardashian Roberto Cavalli posts
 - Three (3) Kim Kardashian Lorraine Schwartz posts
 - Five (5) Kim Kardashian Balmain posts
 - One (1) Khloe Kardashian OUI post
 - One (1) Kourtney Kardashian Manuka post

⁸ Both of these posts are Kourtney Kardashian’s Fit Tea Instagram posts. The edit to these posts (i.e., adding #spon to the caption) does not remedy the deception as reasonable consumers following the Kardashian/Jenner family on Instagram will likely not understand that “#spon” means that the post was sponsored by an advertiser. *See* FTC’s .com Disclosures: How to Make Effective Disclosures in Digital Advertising, March 2013, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (Example 17).

⁹ Email from M. Kump, attorney for the Kardashian/Jenner family, to L. Smith at TINA.org, dated Aug. 24, 2016, available at https://www.truthinadvertising.org/wp-content/uploads/2016/08/8_24_16-email-from-M_Kump-to-L_Smith_Redacted.pdf.