



September 25, 2017

**VIA EMAIL**

Michael Kump, Esq.  
Kinsella Weitzman Iser Kump & Aldert LLP  
808 Wilshire Blvd. 3rd Floor  
Santa Monica, CA 90401  
[REDACTED]

Re: Kardashian/Jenner Family's Continued Use of Deceptive Native Advertising

Dear Mike:

As you know, a TINA.org investigation last August found that the Instagram accounts of Kim, Khloe, and Kourtney Kardashian, as well as Kylie and Kendall Jenner, contained a plethora of posts that promoted companies without clearly and conspicuously disclosing that the women had a material connection with those companies or that the posts were ads, as is required by federal law. This August, we conducted an audit, which revealed that, despite your assurances that your clients were taking this deceptive advertising issue seriously, 40% of the posts that we brought to your attention a year ago remain completely unchanged, while several other posts that were edited still do not contain a sufficient disclosure.

In addition, TINA.org has compiled a new sampling of more than 200 social media posts made by the Kardashian/Jenner women on Instagram, Facebook, and Snapchat that promote companies without properly disclosing their material connections or that the posts are ads. The sampling includes several types of disclosure issues:

- **Lack of disclosure:** no disclosure of the material connection is present. This issue appears even in, for example, Facebook posts that are mirror images of Instagram posts that do contain disclosures (showing that your clients are aware of the need to include disclosures but apparently pick and choose where to use them).

**Example 1:** Kendall Jenner appropriately includes #ad at the beginning of the caption in the Instagram post below in which she promotes JetLux, but fails to include the disclosure in the identical Facebook post.

Kendall Jenner Instagram post, #ad at beginning of caption



Kendall Jenner Facebook post, no disclosure



**Example 2:** Kylie Jenner fails to include a disclosure in this Facebook post in which she promotes Puma.



**Example 3:** Kendall Jenner fails to include a disclosure in this Instagram post in which she promotes Adidas



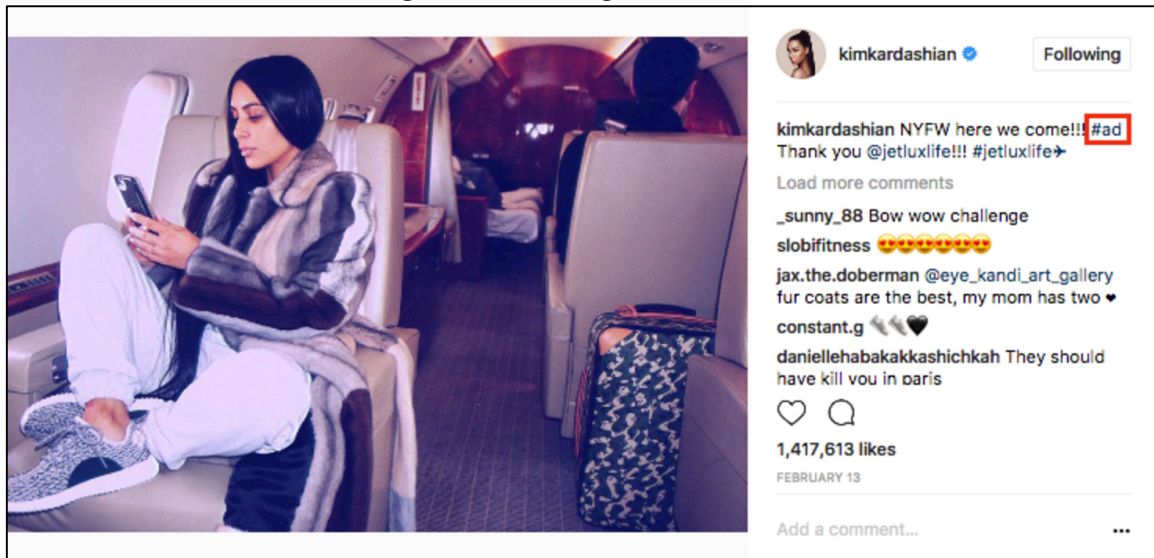
- **Delayed disclosure:** the post was initially made with no disclosure but, after the time period in which the post gets the most interaction (i.e., after the first 10 hours of publication<sup>1</sup>), a disclosure is added.

**Example 1:** Kim Kardashian Instagram post promoting JetLux

Post captured on June 15, 2017, no disclosure



Post captured on September 7, 2017, #ad disclosure added, though not in a conspicuous location



**Example 2:** Kylie Jenner Instagram post promoting FashionNova

Post captured within one hour of posting, no disclosure



Post captured within one day of posting, #ad disclosure added, though not in a conspicuous location



- **Insufficient disclosure:** the post contains a disclosure that does not clearly or conspicuously communicate to consumers that the individual has a material connection to the company being promoted or that the post is an ad. Examples of insufficient disclosures include using ambiguous hashtags such as #KJ4EL, #sp, or #pwcollab, or placing the disclosure in a place unlikely to be noticed, such as in the middle of a caption or at the end such that, in some cases, a reader would need to expand the text box to see it.

**Example 1:** Khloe Kardashian Facebook post promoting Flat Tummy Tea, ambiguous hashtag (#sp) at end of caption



**Example 2:** Kylie Jenner Instagram post promoting SugarBearHair, #ad buried in middle of caption



- **Inconsistent disclosure:** the post, when viewed in one format (e.g., Facebook “Home” feed), contains a disclosure, but when viewed in another format (e.g., Facebook “Photos” gallery), does not contain a disclosure.

**Example 1:** Kourtney Kardashian Facebook post promoting Flat Tummy Tea

“Home” feed view, #ad present, though not in a conspicuous location



“Photos” gallery view, #ad not visible without clicking on “See More”

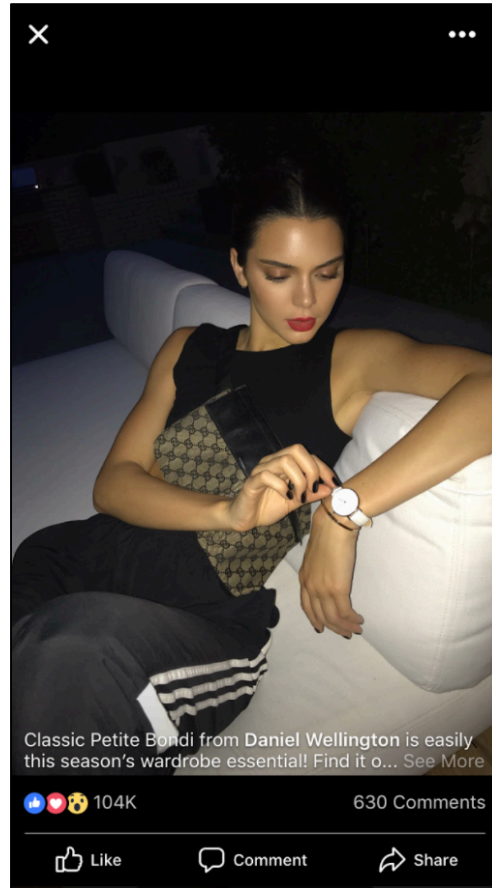


**Example 2: Kendall Jenner Facebook post promoting Daniel Wellington**

“Home” feed view, #ad present, though not in a conspicuous location



“Photos” gallery view, #ad not visible without clicking on “See More”



TINA.org’s full databases for the Kardashian/Jenner women are available at <https://www.truthinadvertising.org/kardashianjenner-database/>.<sup>2</sup>

What is most troubling about our findings is that your clients are now – if they were not before – well aware of their obligations to disclose under the law. There is simply no excuse for their continued failure to abide by truth in advertising requirements. We strongly urge your clients to cease this deceptive advertising immediately.

Sincerely,

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



Cc via email: Mary Engle, Director  
Michael Ostheimer (mostheimer@ftc.gov)  
Mamie Kresses (mkresses@ftc.gov)  
Division of Advertising Practices  
Federal Trade Commission

Adidas  
Alexander Wang  
Ashish UK  
Athletic Propulsion Labs (APL)  
Atkins Nutritionals, Inc.  
Balmain  
Beats by Dre  
Belvedere Vodka  
Ben Taverniti Unravel  
Bumble  
Calvin Klein  
Chaviv Hair  
Chopard  
Christofle  
Coach, Inc.  
Cosmesurge  
Daniel Wellington  
Diff Eyewear  
Dr. Jason Diamond  
Estée Lauder, Inc.  
Express Smile Atlanta  
FabFitFun  
Fashion Nova  
Fit Tea  
Flat Tummy Tea  
Givenchy  
Good American  
HiSmile  
i.am+ BUTTONS  
IamJenniferLe Inc.  
Ippolita  
JetLux  
Kashmere Kollektions  
Lokai  
Lumee  
Lyft  
Manuka Doctor

MVMT Watches  
P.E Nation  
Puma  
Pretty Little Thing  
Protein World  
Shopify  
Quay Australia  
Sorella Boutique  
Sugar Bear Hair  
Star Lash Extensions  
Tracie Martyn  
Waist Gang Society  
Zena Foster

---

<sup>1</sup> <https://unionmetrics.s3.amazonaws.com/wp/2014/09/Brands-on-Instagram-Whitepaper-Sept14.pdf>.

<sup>2</sup> In addition to the disclosure issues outlined above, it appears that at least some of the Kardashian/Jenner women promote medical procedures, as well as medications, without disclosing the risks associated with the use of those procedures or drugs. For example, Kourtney Kardashian promoted – in a June 2017 Instagram post – a physician, Dr. Jason Diamond, as well as two of his medical procedures known as microneedling (where, according to Dr. Diamond, he pokes “a hundred thousand little holes” in the skin to “stimulate a little trauma”) and platelet rich plasma injections (which, according to Dr. Diamond, “fill[s] facial hollows on every area of the face using the patient’s own blood”), without disclosing any risks associated with the procedures. *See* <https://www.truthinadvertising.org/wp-content/uploads/2017/09/Kourtney-Dr-Jason-Diamond-2.mp4>; <https://www.jasonbdiamond.com/microneedling/>; <https://www.jasonbdiamond.com/injectables/>.

And, less than two months later, in September 2017, Kim Kardashian promoted the “amazing” Dr. Diamond and his “amazing...treatments” on Instagram, again without any risk or material connection disclosures. *See* <https://www.truthinadvertising.org/wp-content/uploads/2017/09/Kim-Dr-Jason-Diamond-2.mp4>.