



Mary K. Engle  
Associate Director

United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

June 14, 2018

Mr. Khaled Mohamed Khaled  
c/o Alan Soven, Esq.  
Alan R. Soven, PA  
1571 NW 13th Court  
Miami, FL 33125

Dear Mr. Khaled:

The Federal Trade Commission is the nation's consumer protection agency. As part of our consumer protection mission, we work to educate marketers about their responsibilities under truth-in-advertising laws and standards, including the FTC's Endorsement Guides.<sup>1</sup> In addition, we monitor compliance with the alcohol industry's advertising self-regulatory provisions.<sup>2</sup>

I understand that in March 2018, your attorneys received a complaint from Truth in Advertising, Inc. ("TINA") and six other organizations. It addressed your social media posts endorsing Diageo's Ciroc vodka, Bacardi's D'Usse cognac, and Sovereign Brands' Belaire sparkling wines and Bumbu rum. Numerous social media posts referenced in the TINA complaint endorsed one or more of those brands but did not disclose whether you had connections to their marketers.

The FTC's Endorsement Guides state that if there is a "material connection" between an endorser and the marketer of a product – in other words, a connection that might affect the weight or credibility that consumers give the endorsement – that connection should be clearly and conspicuously disclosed, unless the connection is already clear from the context of the communication containing the endorsement. Examples of material connections include a business, family, or personal relationship; monetary payment; or the provision of free products or services to the endorser.

The Endorsement Guides apply to marketers and endorsers. An endorser who has a material connection to a brand should clearly and conspicuously disclose that connection in his

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<sup>1</sup> The Endorsement Guides are published in 16 C.F.R. Part 255.

<sup>2</sup> See, e.g., FTC, *Self-Regulation in the Alcohol Industry* (Mar. 2014), available at <https://www.ftc.gov/system/files/documents/reports/self-regulation-alcohol-industry-report-federal-trade-commission/140320alcoholreport.pdf>.

or her endorsements. To make a disclosure both “clear” and “conspicuous,” an endorser should use unambiguous language and make the disclosure stand out. Consumers should be able to notice a disclosure easily, and not have to look for it.

With respect to your posts endorsing the alcohol brands referenced in the TINA complaint, it appears that you have edited them by adding “#AD” or a similar disclosure. It also appears that you recognize that the need for disclosure is not limited to alcohol advertisements, because you also use “#AD” or a similar disclosure in Instagram posts endorsing Crep Protect, Hyde Power Potion, and the Licking.

You have posted endorsements of other products or businesses that give no indication as to whether you have any connections to the brands endorsed. These include the attached Instagram posts for the Rolex<sup>3</sup> and Champion<sup>4</sup> brands and for Solestage stores.<sup>5</sup> If you have material connections to Rolex, Champion, or Solestage, those connections should be clearly and conspicuously disclosed in your endorsements.

If you are endorsing a product in social media and a disclosure is necessary, there should be a disclosure in each post. For example, it is clear from one of your posts that shares a music video in which you appear<sup>6</sup> that you were involved in the creation of the Wrinkle in Time movie soundtrack, but another one of your posts endorses the Wrinkle in Time movie but does not communicate your connection to that production.<sup>7</sup> You should not assume that your followers will see every one of your posts.

As I said above, disclosures should be unambiguous. In an Instagram post that shows you holding a red iPhone 8, you wrote, “Proud to be a @RED ambassador. Check out the new @RED iPhone 8 fights AIDS with every purchase. #endAIDS.”<sup>8</sup> The post endorses the iPhone 8, but it is unclear whether you have a material connection to Apple, Inc. If, instead of describing yourself as a “RED ambassador,” you had said that you were an “iPhone ambassador,” it would have been clear

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<sup>3</sup> The post is available at: <https://www.instagram.com/p/BiPrykGFg6R/?hl=en&taken-by=djkhaled>.

<sup>4</sup> The post is available at: <https://www.instagram.com/p/BiHoN4fFAOZ/?hl=en&taken-by=djkhaled>.

<sup>5</sup> The post is available at: <https://www.instagram.com/p/BhvSOgQFeDC/?hl=en&taken-by=djkhaled>.

<sup>6</sup> The post is available at: <https://www.instagram.com/p/BgCyYhRIJKC/?hl=en&taken-by=djkhaled>.

<sup>7</sup> The post is available at: <https://www.instagram.com/p/BgHVMwEF8UD/?hl=en&taken-by=djkhaled>.

<sup>8</sup> The post is available at: <https://www.instagram.com/p/Bhe9bS-l6jt/?hl=en&taken-by=djkhaled>.



that you were connected to the brand. A post does not have call out or tag a brand in order to endorse it. A number of your other posts show you using your red iPhone in ways in which the brand is easily identifiable, and each of those endorses the iPhone.<sup>9</sup>

Another example of what may be an ambiguous disclosure involves your posts endorsing Air Jordans. In an attached Instagram post, you show off and endorse a pair of Air Jordans and both write and repeatedly say, “Still in the meeting.”<sup>10</sup> It is possible that your followers may understand that you are meeting with and working together with Nike, Inc. If, however, a significant minority of your followers don’t understand that and you do have a connection to Nike, then you should include a disclosure.

As I also said above, consumers should be able to notice a disclosure easily. In an attached Instagram post endorsing Hyde Power Potion, you show yourself sitting in a meeting with cans of Hyde Power Potion and you wrote, “@hydepowerpotion is the potion for GOOD ENERGY GREAT ENERGY!! AND GREAT MEETINGS !! @wethebestmusic @rocnation #AD.”<sup>11</sup> The “#AD” disclosure, however, appears on the fifth line of the post. Consumers viewing posts in their Instagram streams on mobile devices typically see only the first three lines of a longer post unless they click “more,” and many consumers may not click “more.” Therefore, you should disclose any material connection above the “more” button.

If you are endorsing the products or services of any marketers with whom you have a material connection, you may want to review the enclosed FTC staff publication, *The FTC Endorsement Guides: What People are Asking*. I’m also enclosing a copy of the *Endorsement Guides* themselves. (Both documents are available online at [business.ftc.gov](http://business.ftc.gov).)

The alcohol industry codes deal with both the content and placement of alcohol advertising.<sup>12</sup> To the extent that you serve as an endorser of alcohol brands, your marketing should be consistent with those codes. The Code of Responsible Practices of the Distilled Spirits Council provides that “beverage alcohol advertising and marketing materials should portray beverage alcohol products and drinkers in a responsible manner.”<sup>13</sup> Many of your posts do not appear consistent with this guideline. These include the Snapchat stories in which you poured

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<sup>10</sup> The post is available at: <https://www.instagram.com/p/BiHzXTjIC2z/?hl=en&taken-by=djkhaleid>.

<sup>11</sup> The post is available at: <https://www.instagram.com/p/Bi2bQ3ilRvs/?hl=en&taken-by=djkhaleid>.

<sup>12</sup> Distilled Spirits Council, *Code of Responsible Practices for Beverage Alcohol Advertising and Marketing* (“DSC Code”), Distilled Spirits Council, *Guidance Note on Responsible Digital Marketing Communications* (“DSC Digital Code”), available at <https://www.distilledspirits.org/code-of-responsible-practices/>.

<sup>13</sup> DSC Code, Paragraph 14.

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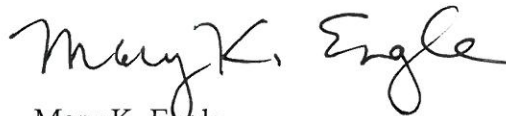
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Ciroc vodka and Belair wine over breakfast cereal; those in which you described Ciroc as the “breakfast of champions”; and those showing you drinking and exclaiming, “*Start* your Monday right. Ciroc. The only way!” There are similar posts in which you urged consumers to “*start* your [Tuesday, Wednesday, Thursday, Friday] right,” as you drank a Ciroc cocktail (emphasis added). Another post showed you standing in the sunlight, next to bottles of Ciroc and Belaire, with the caption, “It’s *always* that time! @ciroc @officialbelaire vibes.” (Emphasis added) Other posts show bottles (often, multiple bottles) of Ciroc and/or Belaire present in many rooms in your home, in the studio, by the hot tub and pool, and in hotel rooms.

The alcohol industry codes further provide that digital marketing communications should be placed only in media where at least 71.6% of the audience is reasonably expected to be of legal purchase age (21 years old).<sup>14</sup> The data cited in the TINA letter raises questions about the audience for your Snapchat stories. We have also learned, however, that Snapchat is making audience demographic data available to influencers.<sup>15</sup> We recommend that you request this data from Snapchat, in order to determine whether your posts are appropriate on that platform.

If you have any questions about disclosures of material connections, please contact Michael Ostheimer at (202) 326-2699 or [mostheimer@ftc.gov](mailto:mostheimer@ftc.gov). If you have any questions about alcohol marketing, please contact Janet Evans at (202) 326-2125 or [jevans@ftc.gov](mailto:jevans@ftc.gov). Thank you.

Very truly yours,



Mary K. Engle  
Associate Director  
Division of Advertising Practices

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<sup>14</sup> DSC Code, Paragraph 3; DSC Digital Code, Paragraph 2.

<sup>15</sup> Marketingland, *Snapchat Rolls Out Analytics Tool to Win Back the Influencers It Has Lost to Instagram*, Feb. 2, 2018, available at <https://marketingland.com/snapchat-rolls-analytics-tool-win-back-influencers-lost-instagram-234541>.