



March 4, 2019

VIA EMAIL AND OVERNIGHT MAIL

Andrew Smith, Director, Bureau of Consumer Protection
Mary Engle, Associate Director, Division of Advertising Practices
Mamie Kresses, Senior Attorney, Division of Advertising Practices
Michael Ostheimer, Attorney, Division of Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580



Re: Social Media Influencers Ignoring FTC Direction

Dear Attorneys Smith, Engle, Kresses and Ostheimer:

As you know, in March 2017, the Federal Trade Commission notified more than 90 social media influencers and marketers about the need to clearly and conspicuously disclose influencers' relationships with brands when promoting products and services on social media websites, such as Instagram. At least 21 of those social media influencers apparently ignored the FTC's specific disclosure instructions and thus received a follow-up warning letter from the Commission five months later reminding them yet again of their legal obligations and pointing out additional potentially deceptive social media posts.

It has now been almost two years since the FTC initially notified these influencers of their obligation to refrain from actively deceiving their social media followers yet all but one of them¹ have continued to mislead their fan base, which range in size from just over 750,000 followers on Instagram to more than 32 million followers, by refusing to consistently and appropriately disclose their material connections to the brands they are promoting.²

In fact, TINA.org has collected more than 1,400 examples across the 20 influencers collectively promoting more than 500 companies, all of which are available at <https://www.truthinadvertising.org/instagram-influencer-database/>.

For example, in this August 2018 post, which garnered more than 300,000 likes, *High School Musical* star Vanessa Hudgens promotes Chad Wood Hair, Alice and Olivia, and Le Specs to her more than 32 million Instagram followers without any attempt at disclosing her material connections to these companies.³



TINA.org has catalogued examples of Ms. Hudgens deceptively promoting more than 60 brands since receiving the FTC’s September 2017 warning letter, including Moschino, Allan Face, I AM GIA, Philosophy, and SemSem.

Similarly, in this December 2018 post, *Modern Family* star Sofia Vergara promotes Payless Shoes to her 16 million followers without disclosing her material connection to the company:⁴



Other brands deceptively promoted by Ms. Vergara on her Instagram page since receiving the FTC's warning letter include, among others, Head and Shoulders, Lorraine Schwartz, Ninja Coffee, Rooms To Go, and her own EBY line of underwear.

And in this post, singer and model Ciara promotes Revlon to her 21 million Instagram followers without disclosing her material connection to the company.⁵



TINA.org catalogued numerous other instances of Ciara promoting more than 20 different companies on her Instagram page without proper disclosures since receiving the FTC's warning letter, including, among others, Alaska Airlines, Buffalo London, Gap Kids, and Stuart Weitzman.

As a final example, in this September 2018 post, television personality Scott Disick (best known for being Kourtney Kardashian's long-term partner) promotes apparel brand Talentless to his more than 21 million Instagram followers.⁶



Mr. Disick has also promoted several others brands on his Instagram page without proper disclosures since receiving the FTC’s warning letter, including Jetlux, Polaroid, SoleStage, Stadium Goods, and Wheels Up.

The above examples, as well as the more than 1,400 other deceptive Instagram ads catalogued in TINA.org’s database, fail to meet the FTC’s clear and conspicuous standard for disclosing material connections to the brands promoted⁷ – with issues ranging from a complete lack of disclosure to using inconspicuous or unclear disclosures such as placing #ad or #sponsored “below the fold” (i.e., not visible unless a user clicks on “more” to expand the caption box) and/or relying on Instagram’s built-in disclosure tool (which is separated from both the image and the caption). What is clear, however, is that these social media influencers do not take the FTC’s regulatory guidance seriously and continue to deceptively market goods and services to their fans. It is time that the FTC takes strict enforcement action against these repeat offenders.

TINA.org urges the FTC to expand its investigation into the marketing tactics used by these social media influencers and put an end to this ongoing and pervasive consumer deception.

Sincerely,

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

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

Cc via regular mail:

Ms. Farrah Abraham
Mr. Aliaume Damala Badara Akon Thiam
Ms. Amber Rose
Ms. Ashley Benson
Ms. Naomi Campbell
Ms. Ciara Princess Wilson
Mr. Scott Disick
Ms. Tiona Fernan
Ms. Lilly Ghalachi
Ms. Lucy Hale
Ms. Chelsea Houska
Ms. Vanessa Hudgens
Ms. Jenni “JWoww” Farley
Ms. Vanessa Lachey
Ms. Shay Mitchell
Ms. Rach Parcell
Ms. Nicole Polizzi
Ms. Lisa Rinna
Ms. Sofia Vergara
Ms. Dorothy Wang

¹ During its investigation, TINA.org did not find evidence showing that Lindsey Lohan, who also received one of the FTC's September 2017 letters, is currently promoting companies without appropriate disclosures.

² TINA.org collected data on these 20 social media influencers from May 2017 to December 2018.

³ Ms. Hudgens' connection to Chad Wood Hair: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Hudgens-Chadwood-Hair-mc-wm.png>.

Ms. Hudgens' connection to Alice and Olive: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Hudgens-alice-and-olivia-mc-with-tags-wm.png>.

Ms. Hudgens's connection to Le Specs: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Hudgens-Le-Specs-mc-wm.png>.

⁴ Ms. Vergara's connection to Payless: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Sofia-Vergara-Payless-mc-wm.png>.

⁵ Ciara's connection to Revlon: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Ciara-Revlon-MC-wm.png>.

⁶ Mr. Disick's connection to Talentless: <https://www.truthinadvertising.org/wp-content/uploads/2019/02/Disick-Talentless-MC-wm.png>.

⁷ The FTC's Endorsement Guides: What People Are Asking, <https://www.ftc.gov/tips-advice/business-center/guidance/fcs-endorsement-guides-what-people-are-asking>.