Competition Bureau Hones in on #SponsoredContent and Social Media Advertising

December 20, 2019

On December 19, 2019, the Competition Bureau (the Bureau) announced it had sent letters to close to 100 brands and marketing agencies involved in influencer marketing in Canada, advising them to review their marketing practices to ensure compliance with the law. The Bureau reached out to brands and marketing agencies following a thorough review of influencer marketing practices across various industries, including health and beauty, fashion, technology and travel.

So-called "influencer marketing" has become an important means of advertising for companies in recent years. An influencer is an online personality who regularly creates and shares content with the public through online platforms such as social media networks, blogs or photo-sharing apps. Influencer marketing entails leveraging an influencers' ability to create interesting and trustworthy content to market advertisers' products and brands.

The Bureau, among other global regulators, has identified influencer marketing as a potential source of misleading advertising. It has issued guidelines and compliance strategies for influencers and advertisers to follow to ensure that they do not violate misleading advertising laws.[1]

The Bureau has noted that, in order to comply with the law, influencers should clearly disclose the "material connections" or "relationships" they have with the business, product or service they promote. A "relationship" includes situations where the influencer receives money or commissions, free products or services, discounts, free trips or tickets to events, or has a business or family connection with the brand. Influencers should prominently disclose the relationship it has to a business on every platform they utilize, using widely accepted hashtags such as #ad or #sponsored.

Advertisers who wish to compensate social media influencers should remember that influencers are making marketing representations on their behalf, and that they can be held responsible for sponsored posts, including if they disseminate misleading content. As such, advertisers should ensure that:

- Influencers clearly disclose material connections to the product in **every** social media post. This disclosure should be in a visible and unambiguous manner, so that it is readily apparent there is a marketing relationship;
- representations made in social media posts are not false or misleading; and
- influencers are not making performance claims on the advertisers' behalf, unless these claims are based on adequate and proper testing.

In addition, it should be noted that when advertisers hold contests that require consumers to post content on social media channels, this could also be considered influencer marketing. Appropriate disclosures (such as hashtags) should be utilized.

Influencers and advertisers should be aware that the deceptive marketing practices provisions of the *Competition Act* apply to influencer marketing just as it would to traditional forms of advertising, and non-compliance can lead to significant penalties. Companies should therefore ensure that they have effective training, monitoring and compliance programs to ensure that all their advertising is #compliant with the Act.

If you have any questions regarding influencer marketing, or other deceptive marketing issues, please do not hesitate to contact us.

[1] See for example The Deceptive Marketing Practices Digest -Volume 4 available online.

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