

# Best Practices for Use of Influencers in US Marketing

August 20, 2018  
ABPI XXXVIII International Congress

Amy Ralph Mudge  
202.344.4743  
[AMudge@Venable.com](mailto:AMudge@Venable.com)  
[AllAboutAdvertisingLaw.com](http://AllAboutAdvertisingLaw.com) (blog)





 **maybelline** FOLLOWING

16.4k likes 1w

**maybelline** Brb, crying because @mannymua733 just broke our hearts with this face beat. He's wearing the new #dreamvelvet foundation. #mnytlook

load more comments

**\_sxnxm\_** 😭 @mrs.\_right1.0

**canmc187ers** Omg @xsena.drmx

**aimz.14** He slays!! @mannymua733

**sultnokyy** Jsjsd @merve.\_ylmz yeni yüzü bak ksjsjs

**sanazesmaelili** @amirakhlaghii @payamdds jooooooooo 🥰🥰🥰🥰🥰🥰

**cynoralemos** @amey1224

**nativeugrri** 🙌🙌🙌🙌🙌🙌

**v\_pratima** @simran\_likhari kriti sanon



 **chiaraferagni**  
Milan, Italy Segui

**chiaraferagni** So excited to be working on something super new to me: becoming a costume designer for "A legend of beauty", the new Intimissimi on ice show ☐ #alegendofbeauty #ChiaraxIntimissimi #ad @intimissimiofficial

carica altri commenti

**paolablanc1971** congratulazioni per questa bellissima esperienza

**teverdeepasticcini** Curiosa!!!

**eleanorjanieri** Beata te...ce gente che studia una vita per andare poi a fare l'hostess o la commessa

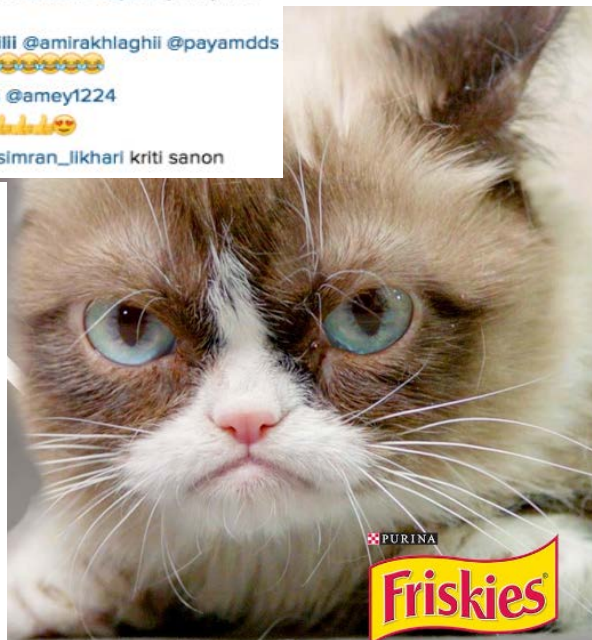
**manuatiara** Wow, in bocca al lupo

♡ 👁

**Piace a 147.362 persone**

14 ORE FA

Aggiungi un commento... ⋮



# What is the Big Deal? Disclosure of Material Connections

---

## Part IV

### Federal Trade Commission

---

16 CFR 255

Guides Concerning the Use of  
Endorsements and Testimonials in  
Advertising Federal Acquisition  
Regulation; Final Rule

#### § 255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed.



## Put Another Way

“The Commission will find an advertisement deceptive if the ad misleads consumers as to its nature or source, including that a party other than the sponsoring advertiser is its source. Misleading representations of this kind are likely to affect consumers’ decisions or conduct regarding the advertised product or the advertisement, including causing consumers to give greater credence to advertising claims or to interact with advertising content with which they otherwise would not have interacted.”

-Enforcement Policy Statement on Deceptively Formatted Advertisements



## When Do I Have to Disclose?

- Any “Material Connection” between an advertiser and influencer
  - Payment
  - Free product or services
  - Sweepstakes entry
  - Other things of value
  - Travel
  - Other business, family or other close relationship to seller
  - Employee relationship
- That would not be expected





**N** nylonmag

4 weeks ago


Follow

Our editor-in-chief @heymichellelee transitioned her everyday outfit into the perfect springtime ensemble with this patterned dress by @lordandtaylor's new #DesignLab collection 🌸

♥ valeria\_santizo, arianatorforever100, miriam\_gurdian2004 and 4,027 others like this.

 sarita10612  
@emitre17

 la\_vie\_boheme85  
@kndnyc Did they raid your closet?

 likecandey  
who makes the jacket?

 conte\_eleni\_  
@annamaria.banakou

 leanweezy  
@relel

 lagirlygirl  
@hawamoj on feek

 hawamoj  
@lagirlygirl for outside land

 hawamoj

♥ Leave a comment...

⋮



## Warner Bros. Home Entertainment, Inc. (consent order)



Warner Bros. Home Entertainment, Inc. (consent order)

Middle-earth: Shadow of Mordor Gameplay - Killing Khrosh the Fearless! HD PC Gameplay

I AM WILDCAT 378,647

Published on Oct 3, 2014

Thanks for watching! LIKE the video if you enjoyed and always leave comments, I read them all! :D Thanks for your support!

Click here for more info on Shadow of Mordor! <http://bit.ly/1vivE1L>  
Click here for the trailer of the game! <http://youtu.be/9ZXC-08gd8>  
This game is Rated M for Mature.

Follow Me on Twitch: [http://www.twitch.tv/I\\_AMWILDCAT](http://www.twitch.tv/I_AMWILDCAT)  
Subscribe to my let's play channel: <http://bit.ly/WILDCATLetsPlays>  
Apply for a Partnership: <http://apply.fullscreen.net/?ref=w1c...>

For Business Inquiries Contact: [IAMWILDCATbusiness@gmail.com](mailto:IAMWILDCATbusiness@gmail.com)

Use the code "WILDCAT" to get 8% off all products from my controller sponsor:  
<http://www.customcontrollerz.com/?cl...>

Outro Song: The Wreckage - Breaking Through <http://www.youtube.com/watch?v=UeGDT7...>

This video is sponsored by Warner Bros.

Category	Gaming
License	Standard YouTube License

SHOW LESS

**This video is sponsored by Warner Brothers.**





# Warner Bros. Home Entertainment, Inc. (consent order)

Middle-earth: Shadow of Mordor Gameplay - Killing Khrosh the Fearless! HD PC Gameplay

I AM WILDCAT 3,911,334 subscribers 378,647 views

Published on Oct 3, 2014

Thanks for watching! LIKE the video if you enjoyed and always leave comments, I read them all! :D Thanks for your support!

Click here for more info on Shadow of Mordor! <http://bit.ly/1vivE1L>

Click here for the trailer of the game! <http://youtu.be/9-ZXC-08gd8>

This game is Rated M for Mature.

**No one reads this far into the description... what are you doing snooping around...**

Subscribe to my let's play channel: <http://bit.ly/WILDCATLet'sPlays>

Apply for a Partnership: <http://apply.fullscreen.net/?ref=w1c...>

For Business Inquiries Contact: [IAMWILDCATBusiness@yahoo.com](mailto:IAMWILDCATBusiness@yahoo.com)

Use the code "WILDCAT" to get 8% off all products from my current sponsor: <http://www.customercontrolerz.com/?cl...>

Outro Song: The Wreckage - Breaking Through <http://www.youtube.com/watch?v=UeLD7T...>

Please flag hateful comments or spam... we don't read that here :D

This video is sponsored by Warner Bros.

No one reads this far into the description... what are you doing snooping around...

SHOW LESS





[Home](#) » [News & Events](#) » [Press Releases](#) » [FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship](#)

## FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

Commission aims to improve disclosures in social media endorsements

SHARE THIS PAGE



FOR RELEASE

April 19, 2017

**TAGS:** [Bureau of Consumer Protection](#) | [Consumer Protection](#) | [Advertising and Marketing](#) | [Online Advertising and Marketing](#)

After reviewing numerous Instagram posts by celebrities, athletes, and other influencers, Federal Trade Commission staff recently sent out more than 90 letters reminding influencers and marketers that influencers should clearly and conspicuously disclose their relationships to brands when promoting or endorsing products through social media.

The letters were informed by petitions filed by Public Citizen and affiliated organizations regarding influencer advertising on Instagram, and Instagram posts reviewed by FTC staff. They mark the first time that FTC staff has reached out directly to educate social media influencers themselves.

The FTC's [Endorsement Guides](#) provide that if there is a "material connection" between an endorser and an advertiser – 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 it is already clear from the context of the communication. A material connection could be a business or family relationship, monetary payment, or the gift of a free product. Importantly, the Endorsement Guides apply to both marketers and endorsers.



EVENTS  
CALENDAR

### For Consumers

Blog: [Is that post #sponsored?](#)

### For Businesses

Blog: [Influencers, are your #materialconnection #disclosures #clearandconspicuous?](#)

[Endorsements](#)

[FTC's Endorsement Guides: What People Are Asking](#)

### Media Resources

Our [Media Resources](#) library provides one-stop collections of materials on numerous issues in which the FTC has been actively engaged. These pages are



Home » News & Events » Press Releases » FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

## FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship

Commission aims to improve disclosures in social media endorsements



EVENTS  
CALENDAR

## CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers

Owners must disclose material connections in future posts; FTC staff also sends 21 warning letters to prominent social media influencers



EVENTS  
CALENDAR

SHARE THIS PAGE



In English

En Español

FOR RELEASE

September 7, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing



### Related Cases

CSGO Lotto, Trevor Martin, and Thomas Cassell


advertiser – 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 it is already clear from the context of the communication. A material connection could be a business or family relationship, monetary payment, or the gift of a free product. Importantly, the Endorsement Guides apply to both marketers and endorsers.

Our media resources library provides one-stop collections of materials on numerous issues in which the FTC has been actively engaged. These pages are




 **TmarTn**   
@TmarTn  

Made \$13k in about 5 minutes on CSGO betting. Absolutely insane. Reactions here 😂:  
[youtu.be/\\_V-dS74WJTw](https://youtu.be/_V-dS74WJTw)

RETWEETS 109 LIKES 915 

9:56 PM - 6 Mar 2016

 45  109  915

 **Thomas**     
@ProSyndicate  

Bruh.. i've won like \$8,000 worth of CS:GO Skins today on @CSGOLotto I cannot even believe it!

RETWEETS 75 LIKES 972 

4:34 PM - 30 Mar 2016

 52  75  972

# FTC Pen Pals





heidiklum

Follow

36,970 likes

52w

heidiklum Guess what i am doing today  
😏

load more comments

jui\_swagi Bitte

elisa\_fabienne Cool

marciano74 Ich will auch eine 🙏🙏

fraukelingg Ich will ein 🍩 von meiner Tochter 😂👍

jhessygleicia Sdv ult

lina.sewing @annasophie\_love 3 mal Werbung unter diesem Bild. ... und noch nicht mal nen Bild abgestet sondern

Log in to like or comment.





heidikum

Follow

36,970 likes

52w

heidikum Guess what i am doing today



load more comments







heidiklum

Follow

heidiklum This is NOT a sponsored Dunkin Donuts post ....and I did NOT get paid for this !!!

**heidiklum** This is NOT a sponsored Dunkin Donuts post ....and I did NOT get paid for this !!!



ninajuff

emily\_rogers @kristinamatthews

kristinamatthews @emily\_rogers hilarious



carolinemanzo

Follow

3,949 likes

27w

carolinemanzo Keeping on my healthy kick in the kitchen tonight with @hellofresh. Since all the fresh ingredients are pre-measured for perfectly portioned meals, I don't have to think about meal planning and can just start cooking! Love that I have @hellofresh to switch it up when I just don't have the time to grocery shop and meal prep. Give it a try with my code "FreshCaroline" for \$35 off your first healthy week at [hellofresh.com](https://hellofresh.com) #fallmeals #healthy #hellofreshpics #sp

load more comments

jcaffa13 Go you! You've always been one of my favorite! You keep it real. And, I love that cutting board! Like pumpnickel



carolinemanzo

Follow

3,949 likes

27w

carolinemanzo Keeping on my healthy kick in the kitchen tonight with @hellofresh. Since all the fresh ingredients are pre-measured for perfectly portioned meals, I don't have to think about meal planning and can just start cooking! Love that I have @hellofresh to switch it up when I just don't have the time to grocery shop and meal prep. Give it a try with my code "FreshCaroline" for \$35 off your first

meal prep. Give it a try with my code "FreshCaroline" for \$35 off your first healthy week at [hellofresh.com](https://hellofresh.com) #fallmeals #healthy #hellofreshpics #sp

fresh.com #fallmeals #cs #sp

ve always been one  
ep it real. And, I love  
e pumpernickel  
d you get it?  
money to be lazy

Log in to like or comment.





ssh\_maritime



lindsaylohan

Follow

lindsaylohan #cannes 🌊🌊🌊 #chakra  
#blessed #LohanJewelry @ssh\_maritime

load more comments

andres.7.summer 🇩🇪

ronalfirman Beautiful

sephiorthcloud Beautiful women

louis\_heyzen Freaky Friday?

\_anita\_grava\_ Beautiful 😍❤️

\_anita\_grava\_ I LOVE YOUU

\_anita\_grava\_ 😊

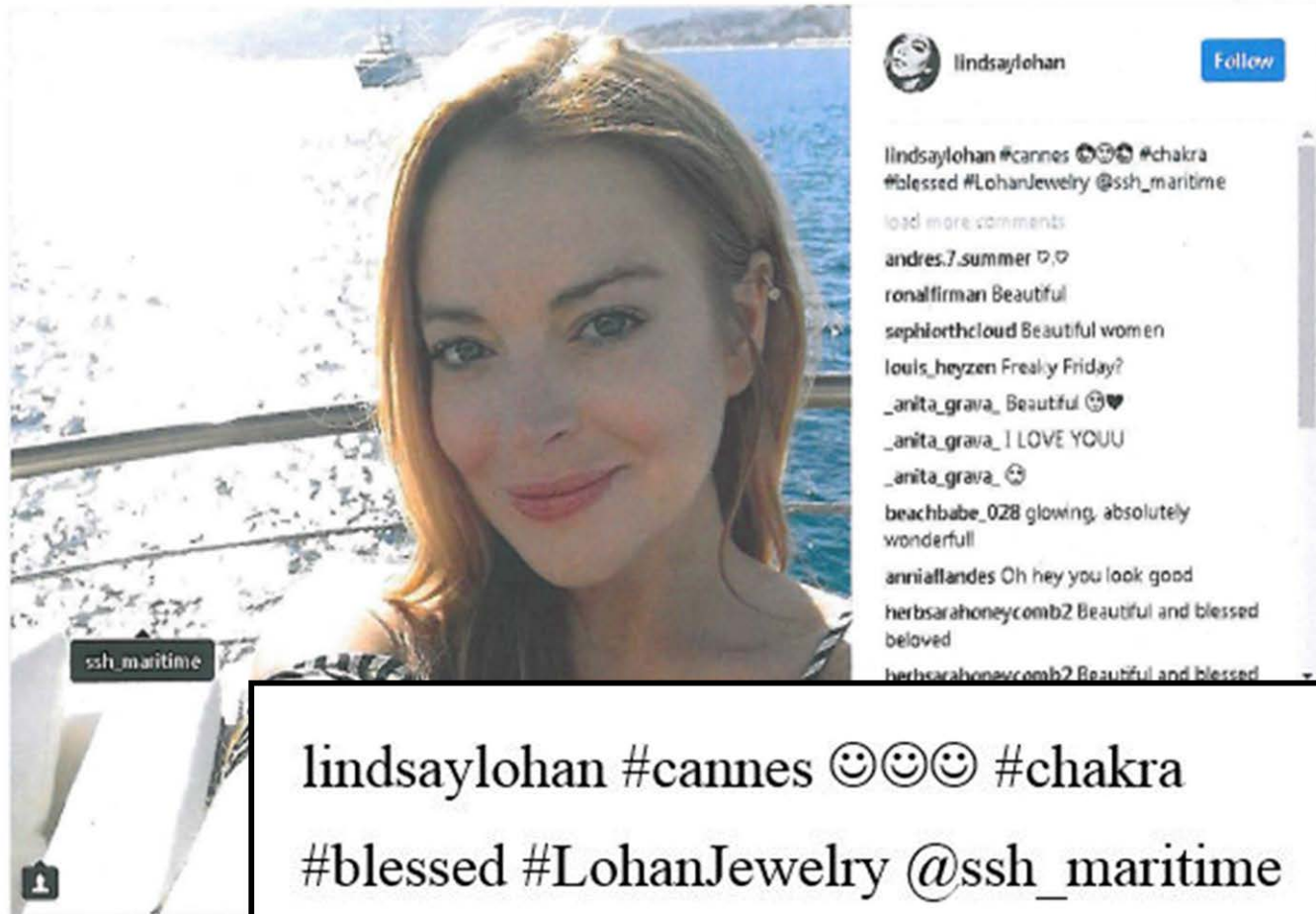
beachbabe\_028 glowing, absolutely  
wonderfull

anniallandes Oh hey you look good

herbsarahoneycomb2 Beautiful and blessed  
beloved

herbsarahoneycomb2 Beautiful and blessed





lindsaylohan

Follow

lindsaylohan #cannes 😊😊😊 #chakra  
#blessed #LohanJewelry @ssh\_maritime

load more comments

andres.7.summer 📷📷

ronalfirman Beautiful

sephiorthcloud Beautiful women

louis\_heyzen Freaky Friday?

\_anita\_grava\_ Beautiful 😊❤️

\_anita\_grava\_ I LOVE YOUU

\_anita\_grava\_ 😊

beachbabe\_028 glowing, absolutely  
wonderfull

anniaffandes Oh hey you look good

herbsarahoneycomb2 Beautiful and blessed  
beloved

herbsarahoneycomb2 Beautiful and blessed

ssh\_maritime



lindsaylohan #cannes 😊😊😊 #chakra  
#blessed #LohanJewelry @ssh\_maritime



## When Do I have to Disclose?

- Promoting a product or service
- No disclosure for “mere product placement”





Instagram

Search

Get the app

Sign up | Log in



rachparcell

Follow

rachparcell Happiest birthday to my sweet Isla Rose. I will never be able to put into words how much I love this little girl. She had my whole heart from the moment I laid eyes on her. I'm so blessed and honored to be her mama. I'm sharing a bunch of photos (some never before seen) of Isla Rose over the last two years on my blog today!! (link in profile). 🌸🌸#happybirthday #secondbirthday

load more comments

gladysvitaliano She is beautiful god bless her .she is a little angel 🌸

lc\_steele Sweet Isla 🌸🌸

maryamsd She's such a beauty 😊 God bless her

olivelanedesign Happy Birthday Isla! 🌸🌸🌸

rclayton She could not be more precious.



17,822 likes

MAY 3

Log in to like or comment.





letthelordbewithyou

Follow

abpi 5 ANOS

SOCIEDADE BRASILEIRA DA  
OPRIEDADE INTELECTUAL

118k likes

letthelordbewithyou Getting my teeth  
4th of July ready! @pearlywhitesaustralia  
introduced me to coconut & charcoal  
infused whitening strips! Check out  
pearlywhitesaustralia.com #nosensitivity  
#ad @pearlywhitesaustralia

view all 679 comments

zsofiszenyeri @xjoyyx of niet, laat maar  
❤️

bebyfacee Handsome my husband

saydeekuh Tom cruise

arianneglada @christina.oz

princessterter Charlie ! @alwayssunnyfxx

8paau @23lauri

**letthelordbewithyou** Getting my teeth  
4<sup>th</sup> of July ready! @pearlywhitesaustralia  
introduced me to coconut & charcoal  
Infused whitening strips! Check out  
Pearlywhitesaustralia.com #nosensitivity  
#ad @pearlywhitesaustralia



## Disclosures Need to be Unavoidable

- Early: Ideally placed at beginning of longer post.
- Grabs the Attention:
  - Not in middle of or at end of list of # or @ terms.
  - Not “below the fold” or after “read more”
    - On Instagram this is in first 3 lines
- Where viewers likely to look: if a video then in the video
- Often: Disclosure with any teasers or links or social posts driving viewers to the post. Repeat disclosures for streamed content





emrata

Follow

248,614 likes

47w

emrata Thanks @nipandfab for these pads. #ad @cvspharmacy @mrsrodial #nipandfab

load more comments

gabry\_annunziataa Bruttina

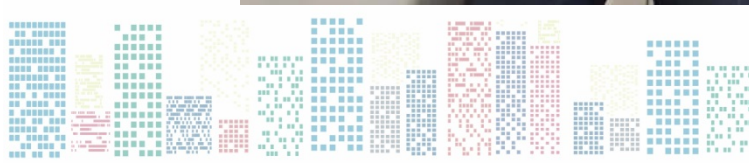
janelle.zamora @delllaaaaa

annyaaforges @yuhan\_perera

william\_naim @emrata Hey How are u ?? I follow you for a long time, I want to congratulate you for what you do and the image that you arrive to give people through the social networks. You inspire me very much, I am jewelry designer my brand is @myjewelerisw and I would love to be able to get in touch with you to send you jewels from my collection. I guess you have to be much asked .. but I try my luck .. thank you so much continues like that ..



**emrata** Thanks @nipandfab for these pads. #ad @cvspharmacy @mrsrodial #nipandfab





diddy

Follow

5,759 likes

47w

diddy Let's GO!!! @aquahydrate #balance #hydrate #tryIT

load more comments

mylife\_n\_thesunshine CHECK MY VIDEO PUFF! 🎧🎧🎧🎧🎧🎧🎧🎧🎧🎧

llebpface @konan\_b\_pacome

falboybeatz #drinkingsofnewyork

elishazuniga72 Cheers @iamdiddy I'm drinking the same thing right now as I'm sweating it out in the sauna. #72staypositive

finedicipline We going meeeen

burak\_derulo\_0 Pastor Diddy 😎👏

sephora9124 I will need this after you make me squirt

knolig\_works Nice shot

mastew25 This water is so good. I hope to buy some this weekend. Delicious

diddy Let's GO!!! @aquahydrate #balance #hydrate #tryIT



jlo

Follow

abpi / 5 ANOS  
SOCIAÇÃO BRASILEIRA DA  
OPRIEDADE INTELECTUAL

633,141 likes

34w

jlo #TBT to my Birthday weekend in Vegas!! Thanks again @vodkabeluga #vodkabeluga

load more comments

elmannsour\_i\_hassan Bon fotooo

kimberlysalas.13 BEAUTIFUL

2016alirezatehran Hi

lorenasantiagomusic 🍷🍷🍷🍷

jswing415 Missed your Birthday! HappyBirthday

passionatelove7771 Wow looking steamy hot Mami

passionatelove7771 Also late happy b-day

passionatelove7771 When is your birthday anyway?

jlo #TBT to my Birthday weekend in Vegas!! Thanks again @vodkabeluga #vodkabeluga



emrata

Follow

abpi 5 ANOS  
SOCIAÇÃO BRASILEIRA DA  
OPRIEDADE INTELECTUAL

230k likes

4d

emrata Thanks @nipandfab for these insane glycolic night fix pads. Ready for my bday week → @cvspharmacy @mrsrodial #nipandfab

view all 1,208 comments

thepennycloset\_ Perfect! 🐾

kathyyoung0802 @nicrutsid my kind of body goals 😊👏💧 (look more at her ig)

haniamalhas @loulwans.7

ruby\_pettis @livsinnamon

coppola @stellabougg sexy

danielsenm @leifeduardo

lonedreamer Bella figa

**Emrata** Thanks @nipandfab for these  
Insane glycolic night fix pads. Ready for  
My bday week @cvspharmacy  
@mrsrodial #nipandfab



kimkardashian

439k likes

1d

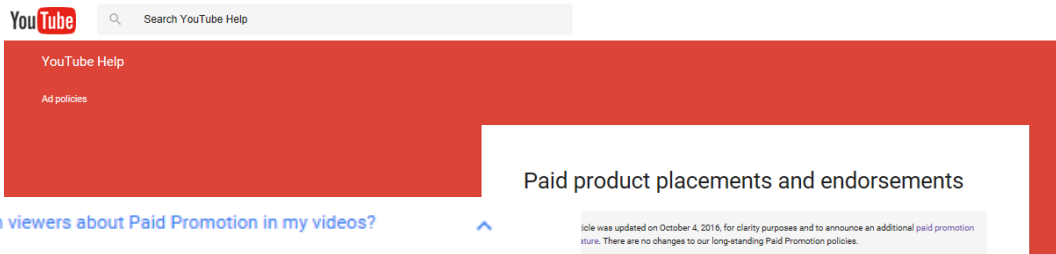
**kimkardashian** OMG. Have you heard about this? As you guys know my [#morningsickness](#) has been pretty bad. I tried changing things about my lifestyle, like my diet, but nothing helped, so I talked to my doctor. He prescribed me [#Diclegis](#), I felt a lot better and most importantly, it's been studied and there was no increased risk to the baby. I'm so excited and happy with my results that I'm partnering with Duchesnay USA to raise awareness about treating morning sickness. If you have morning sickness, be safe and sure to ask your doctor about the pill with the pregnant woman on it and find out more

I'm partnering with Duchesnay USA to  
Raise awareness about treating morning  
sickness. If you have morning sickness,  
Be safe and sure to ask your doctor

abpi / 5 ANOS

SOCIEDADE BRASILEIRA DA  
PROPRIEDADE INTELECTUAL

# What About "Paid Promotion" on YouTube?



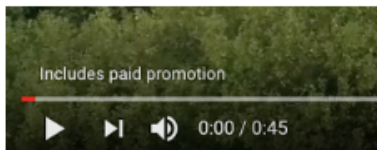
## Is there a feature that can help me inform viewers about Paid Promotion in my videos? ▲

Yes. We now offer an additional feature that enables creators to opt-in to a visible disclosure for viewers, which appears as a text overlay for the first few seconds when a viewer watches the video.

You can choose to add the paid promotion disclosure to any new or existing videos without having to upload a new video. If you add the paid promotion disclosure to an existing video, the video will keep its view count and other video metrics.

Use the paid promotion disclosure feature by following these instructions:

1. For any new or existing video that contains Paid Promotion, [follow the steps above](#) to check the "video contains paid promotion" box.
2. You'll see a second checkbox that says **Help me inform viewers of paid promotion by adding a disclosure to this video.**
3. Check this box to add a 10-second text disclosure on your video that says "Includes paid promotion."
4. Viewers will see this when they start watching the video on a computer or the latest version of the YouTube mobile app.



**Note:** Even if you use the paid promotion disclosure feature, keep in mind that different jurisdictions have various requirements for creators and brands involved in Paid Promotion that may require you to do more, so be sure to check and follow applicable laws.



# Facebook/Instagram "Paid"





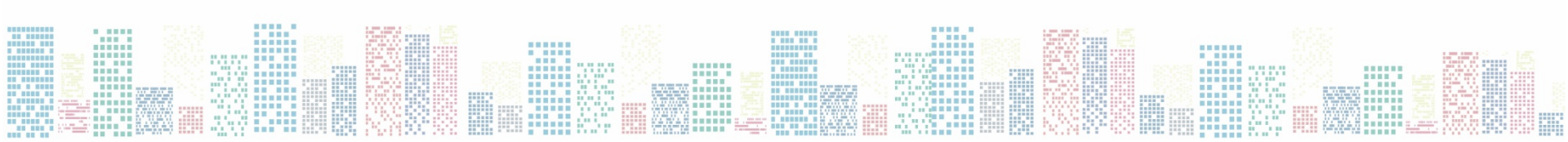
# Bottom Line

Naughty List	Nice List
[brand]ad	Ad, advertising, paid advertising, [Brand]Ad
Sp, spon	Sponsored
Ambassador, Employee	[Brand]Ambassador, [Brand]Employee, [Brand]_Ambassador, [Brand]_Employee
Partner	[Brand]Partner, [Brand]_Partner
Thanks, Thank You, Thanks[Brand]	Thanks [Brand] for gifting me/Thanks[Brand] for the free [detail the stuff given]
[Brand]	
Platform disclosure alone	



## Whose Problem Is This?

- FTC has jurisdiction over anyone who participates in the “creation or dissemination of advertising” or anyone who “directly or indirectly” participates in presenting a commercial message
  - Marketers/Brands
  - Ad agencies
  - PR agencies
  - Affiliate marketers
  - Publishers/Media companies
  - Endorsers



## The **Do's** and **Don'ts** for Social Media Influencers

FTC RECOMMENDATIONS	PRACTICES TO AVOID
 <p>Clearly <b>DISCLOSE</b> when you have a financial or family relationship with a brand</p>	 <p><b>DON'T ASSUME</b> followers know about all your brand relationships</p>
 <p>Ensure your sponsorship disclosure is <b>HARD TO MISS</b></p>	 <p>Don't assume disclosures <b>BUILT INTO</b> social media platforms are sufficient</p>
 <p>Treat sponsored tags, including tags in pictures, <b>LIKE ANY OTHER</b> endorsement</p>	 <p>Don't use <b>AMBIGUOUS DISCLOSURES</b> like "Thanks," #collab, #sp, #spon, or #ambassador</p>
 <p>On image-only platforms like Snapchat, <b>SUPERIMPOSE DISCLOSURES</b> over the images</p>	 <p>Don't rely on disclosures that people will see only if they <b>CLICK "MORE"</b></p>