

Doctor influencer, are you ignoring the UAE rules?

Fiona Robertson - Senior Counsel, Head of Media - Technology, Media & Telecommunications
- Dubai International Financial Centre

Minal Sapra

M.Sapra@tamimi.com - Dubai

Hey. Did you see the new post that influencer put up on that weight loss supplement? Look at her 'before' and 'afters', it can't be photo shopped. She said it works so it must! Who needs a gym and a nutritionist when the supplement makes you lose the weight and will make you look like her.

Influencer marketing has forever changed the world of marketing. In many ways, influencers rule the media industry ... and in doing so, they often flout the rules that apply in the advertising world.

What's an influencer?

The 2018 Electronic Media Activity Regulation Resolution ('E-Media Law') was passed to address various categories on online commercial activity, and included regulations addressing the role of influencers. The E-Media Law does not include an express definition for an 'influencer'. Instead, it refers to the activities conducted online, which include: selling or otherwise dealing in print, video, and audio materials; electronic publishing activities and on-demand printing; specialised websites including news websites and online advertisements and applications; and any other electronic activity added in future by the National Media Council ('NMC').

It then goes on to note that:

"Any person who [undertakes these activities] on a commercial basis, shall obtain a prior license from the Council, provided that:

1. ...
2. Ads that are presented on Social Media shall be subject to the advertising standards that are applicable at the Council;
3. ...
4. The account owner is responsible for the content of the account."

The Article is clear. As you would expect, being online does not remove the obligation on the owner of an account from compliance with advertising standards.

The laws that govern social media and influencers

The Chairman of the Board's Resolution No. 26 of 2017 on Media Content ('2017 Resolution') was passed by the National Media Council to clarify the type of content that can be distributed in the UAE. Article 43 of the 2017 Resolution clearly states that "[a]ll paid advertising materials or items shall include a clear and candid indication that they are paid advertising materials or items." This applies to all media, including social media. In addition, Article 45(7) states that "the identity of the advertisement must be made clear

and be presented as they are special and independent from the other advertising and editing materials or items, and borders must be placed to be separate such advertisement from any other material or item as well as intervals or time breaks in case of TV and radio broadcasting.”

To help with the interpretation of these Articles in relation to social media and online advertising content, the government then issued Advertising Guidelines in 2018. These included the mandatory use of the hashtag '#ad' or '#paid_ad' for disclosure of the commercial relationship that is in place. These hashtags must be legible and easy to find – readers should not have to scroll down to find them. It is important to note that these are designed to protect consumers, and indicate to consumers that the influencer and the brand are both acting responsibly.

Specific rules for medical products

Article 45 of the 2017 Resolution notes that “[t]he prior consent must be obtained from the competent authorities in regards to whatever related to specialized advertisements such as those connected to medicine, medications”.

So what does this entail, and does it apply to influencers?

The definition of Medical Product under Ministerial Resolution No. 430 of 2007, as amended ('Health Advertisement Resolution') is as follows:

“Everything works in or linked to the human health, such as medicine and drugs, including herbal medicine – health food, nutritional supplements and beauty centres – medical apparatus and supplies – medical institutions – people who [are] practicing medical profession of physicians and technicians – ways and methods of medical treatment by traditional or alternative methods.”

This is a definition that is broad in scope and potential application. There is no doubt that it would include any product that claims to have a medical effect. If the claim is that a product will 'help you lose weight' or 'cure acne', this would be enough to trigger the application of the Health Advertisement Resolution.

A health advertisement, under that same Health Advertisement Resolution is noted as being:

“any information about the Medical Product in written, photographic and broadcasting form,

in the form of a design, in the form of a product packaging in any of the media whether audio, visual and printed, in the form of posters in public places or in promotional form through the means of personal, technical or electronic messages communication.”

This is also a broad definition. The Health Advertisement Resolution requires all such health advertising to be licensed before it is used within the UAE, when it will go through a rigorous approval process. The requirement for approval clearly extends to all forms of advertising and publicity, such as websites and social media and there is no indication in the Health Advertisement Resolution that it does not apply to influencers. On a strict interpretation of the law, influencers should only include content about a Medical Product within their social media feed if that content has been approved by the authorities.

The steps to take towards compliance

As long as:

1. the influencer has a licence;
2. the medical product is approved for use in the UAE;
3. the advertising material is approved under the Health Advertisement Resolution; and
4. the post has #ad included in the content,

then the parties involved should feel comfortable that they are compliant with the law. The authorities are not likely to ignore material that does not comply with the above; the health authorities, in particular, take this matter very seriously.

It really is no surprise that the authorities all expect influencers to comply with all laws that would apply to any entity that is undertaking advertising in the UAE. The surprise is the number of influencers who do not know about these laws or choose to ignore them.

For further information, please contact healthcare@tamimi.com.