

Social Media Campaigns and Influencers: Know the Law

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The rise of social media across the past decade has had a significant effect on the way that brands interact with consumers. Not only is social media now taking a large percentage of global advertising budgets, it is providing an effective way for brands to communicate directly on a B2C level. With this rise of social media, we saw the introduction of a new type of brand ambassador – the social media influencer.

All of this occurred under the umbrella of media and advertising laws that were not always designed to deal with the way that the new media operated. Governments globally are reacting accordingly, and brands need to stay agile and keep up to date with new rules and regulations on a regular basis.

So what are the rules covering social media advertising and the use of influencers in the United Arab Emirates?

Content rules generally

These rules are found across a few sources, most of which are directed towards media and advertising generally. The source of the law is a 1980 law – Federal Law No. 15 Of 1980 Governing Publications and Publishing (“PPL”). The PPL contains the basics of content regulation despite it being passed about 15 years before the internet became commonly used.

To address the issues, and to confirm the position in relation to content guidelines in particular, the UAE passed Cabinet Resolution No. (23) of 2017 Concerning Media Content (“2017 Cab Res”). That Cabinet Resolution gave the National Media Council the right to pass further regulation in the area, and they then passed the Chairman of the Board’s Resolution No. (26) of 2017 on Media Content (“2017 NMC Res”). This added much more detail to the 2017 Cab Res. Pertinently, it includes a lengthy description of the sort of content that is prohibited in the UAE (Article 5) and these restrictions applies to both content and advertising. It is important to note that these two Resolutions are media agnostic – they apply equally to all media.

Influencers in Social Media

2018’s Electronic Media Activity Regulation Resolution was passed to address the issue of media outlets bypassing the 1980 PPL and distributing media content online without a licence from the National Media Council (“NMC”). However, as part of the 2018 E-Media Res, the NMC included a licensing regime which would apply to influencers. Specially, and very clearly, it states “Social Media accounts’ owners who offer paid advertising services shall obtain a license from the National Media Council.”

This 2018 Res notes specifically that the owner of such sites are subject to compliance with all media and

advertising standards – a position that is not surprising given the broad application of the 2017 Cab Res and the 2017 NMC Res.

An initial flurry of press about this issue has calmed down with agencies being permitted to arrange licences for multiple influencer clients. This created a new industry in town – specialised influencer agencies.

How Do Consumers Know It's an Ad?

Globally there is a strong move towards including clear declarations that advertising is in fact advertising, in an effort to ensure there is no consumer confusion. This government concern pre-dates the rise of social media – magazines, radio and television have all been subject to similar requirements over the years.

In the UAE, Article 19 of the 2017 Cab Res states: “All paid advertising material must be explicitly and clearly stated as paid advertising material.” The 2017 NMC Res adds a little more to this in Article (43): “All paid advertising materials or items shall include a clear and candid indication that they are paid advertising materials or items.” This applies to all advertising in all media, including social media. On a strict interpretation of the law, a Facebook page for a brand should clearly state that it is advertising. In practice this is not always occurring, with brand utilising alibi pages, for example, or otherwise assuming consumers will understand the advertorial style of the pages.

Article (45) (7) does add further complication for such practices. It 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.” Again, it is not a simple matter to properly analyse social media pages for compliance with this requirement.

To try and clear up this ambiguity, particularly in relation to influencers, the government issued a Guideline for Advertising late in 2018. The Guidelines, aside from providing a neat summary of laws applicable to advertising, do also contain the following list of special conditions for social media. Key points include the use of the hashtag “#ad” or “#paid_ad” for disclosure – “thank you to ...” or “in cooperation with...” are not sufficient. These hashtags must be legible and easy to find – readers should not have to scroll down to find them. Video content must include a verbal reference to the disclosure within the video.

When Does an Influencer Have to Disclose?

Any licensed influencer who presents advertising must comply with the advertising standards, which would of course include the above disclosure regime. Interestingly though, the definition of “Electronic Advertising” does actually include unpaid presentations though: “Any paid or unpaid form of presentation or promotion of ideas, goods or services by electronic means or network applications.”

Our view is therefore that, on strict interpretation, all advertising whether paid or unpaid should include a disclosure.

From a brand perspective, it is interesting to note that the 2018 E-Media Res does state that the account owner is responsible for the content. We have not yet seen brands being sent notices about influencer content, but we are still in the early stages of the implementation of this resolution.

Other Common Issues

We regularly see brands making an assessment of the content standards and general sensibilities of the UAE from their home countries. This often results in content that either insults the market or overly conservative content. Similarly, influencers themselves cannot be depended on to provide a compliant assessment of the market or to know the governments 'hot button' issues.

It is also interesting to note that influencers are still steadfastly ignoring the guidelines, and omitting "#ad" or "#paid_ad" from social media posts that are clearly paid advertising. However, many brands are allowing this to continue, seeking high interaction numbers from these campaigns. Ultimately, the NMC will choose to take action which will inevitably result in a significant amount of PR for the matter. Compliance with the laws, with contracts with influencers clearly requiring that compliance, will become an essential part of doing business in this sector of the marketing industry.