

Successfully Influencing the Social Media Platforms by Influencers and Brands

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It's no secret that the world of influencers is fast growing. Becoming a full-time online promoter has its benefits, and is becoming an increasingly lucrative and sustainable work stream. This was especially helpful in allowing individuals to support themselves during the pandemic when traditional work models were struggling. This was due in part to a rise in social media marketing budgets and a rise in the number and frequency of social media users.

It also allows brands to innovate how they conduct marketing campaigns.

One of the reasons influencer marketing is so successful is that influencers are able to create a personal connection with their audiences and gain invaluable insights into what people want. Creative and talented content providers even have an additional advantage of creating advertising material which you aren't even aware is advertising material. I have on many occasions watched a TikTok or Instagram reel, immersed in the story and entertainment, before realising I was actually being sold something.

On the one hand, we do not want our social media platforms to become catalogues. On the other hand, this method of advertising usually beats the tedious and sometimes invasive methods of traditional advertising, such as cold-calls and disruptive commercials whilst we are trying to watch our favourite show.

Regulators have introduced legislations in an attempt to keep on top of this growing industry, and ensure influencers are not providing misleading or deceptive content. Local influencers and brands need to be wary of UAE laws that serve to regulate the ways in which advertising materials are provided online. Although becoming an influencer can provide a very lucrative revenue stream, influencers need to remember that their brand is entirely at the hands of very powerful technology media platforms. These platforms are vulnerable to takeovers, competition and local regulations. Without strategies to mitigate against potential threats, social media platforms become an unstable ecosystem for influencers to rely on revenue streams. In particular, the UAE has specific and strict content laws that govern what content can and cannot be displayed online. If an influencer or brand offends either the platform's terms and conditions or use and / or the local laws of the UAE, they could be in trouble.

For an influencer or brand to mitigate against a social media platform shutting accounts down or deleting content, they must ensure they have protocols in place to review and respect local laws and any terms and conditions established by the social media platform. Such platforms are also usually established outside the UAE, so legal recourse can be challenging. From a liability perspective, it is possible that influencers or brands may bring claims against such platforms for loss of profit and damages by such influencers or brands. However, the platform's terms and local laws will play a role in the prospects of such claims and may potentially get dismissed especially when such influencers or brands have breached that platform's terms of use or local laws in uploading infringing or prohibited content.

If you are an influencer or a brand who relies on such platforms, we suggest you take steps to prevent losses initially, rather than assuming you will be able to recover after getting into trouble. This article will reveal the important steps to take for both influencers and brands in order to do this. Ultimately, these fit into two categories: mitigation and diversification.

Mitigation

Obtaining a license

The 2018 Electronic Media Regulation Resolution (“E-Media Regulation”) issued by the National Media Council (“NMC”) is of particular relevance to the world of influencing.

The NMC is the main regulator in the media space, who regulates all types of content and has the power to issue licenses and fines.

The E-Media Regulation does not include an express definition for an ‘influencer’. Instead, it refers to the activities conducted online which include, (i) selling or otherwise dealing in print, video, and audio materials; (ii) electronic publishing activities and on-demand printing; (iii) specialised websites including news websites and online advertisements and applications; and (iv) any other electronic activity added in future by the National Media Council. The regulations apply to all electronic media activities carried out in the UAE, both onshore and in the free zones.

Whether an influencer is required to obtain a license requires details of that influencer’s specific operations which are available at the following link: <https://nmc.gov.ae/en-us/Services/Pages/New-Media-Licence.aspx>

Advertising rules

National Media Council’s (“NMC”) Chairman of the Board’s Resolution No. (26) of 2017 on Media Content (the “2017 Content Res”) sets out that all paid advertising materials or items shall include a clear and candid indication that they are paid advertising materials or items.

This has introduced a requirement for clarification mechanisms such as #ad hashtags to be used for influencer campaigns.

Content restrictions

Ultimately, the UAE is a country that prioritises modesty and privacy, and does not welcome objectionable or controversial material. With this in mind, influencers and the brands directing influencers must ensure applicable rules are followed. This includes not to prohibit any UAE law.

You must also ensure that you follow the content restrictions that are contained within Federal Law No.15 for 1980 Concerning Press and Publications (“PPL”) and further clarified under Article 5 of the 2017 Content Res, when publishing any form of content. Chapter 7 of the PPL contains the following prohibitions:

- No criticism of any Rulers of the Emirates.
- No instigation against Islam or the system of ruling.
- No harm to the interest of the state or values of society.
- No opinions that violate public discipline and order, or insult teenagers, or circulate subversive ideas.
- No instigating criminal activity or inciting hatred.
- No publishing confidential communications without permission.
- Minutes of meetings, deliberations, court hearings must not be published in bad faith, misinterpreted or distorted.
- No blemishing a president of, or agitating relations with, an Arab, Islamic or friendly state.
- No article defaming Arabs and their civilization and heritage.
- No news on an ongoing criminal investigation if the judge orders confidentiality.
- No information about an individuals’ private life if meant to disgrace them.
- No secret that may cause harm a reputation.
- No publication to coerce payment of other benefit.
- No false news (with bad faith).

- No news that may harm the national currency.
- Nothing inconsistent with public conduct, or misleading to the public.
- No maligning a public official unless done in good faith.

In addition, there is a specific law that prohibits hate speech: Federal Decree by Law No. 2 of 2015 on Combatting Discrimination and Hatred. This law has been much discussed but remains largely untested in the courts. It specifically punishes hate crimes and discrimination with penalties including imprisonment (from six months to fifteen years) and fines of between AED 50,000 to AED 2,000,000.

Observing platform terms

Platforms have specific terms and conditions that must be respected if an influencer or brand wishes to use that platform for advertising purposes. These usually have broad rights of discretion.

For example, in its Terms of Use, one platform has the right to remove content and accounts containing content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Use.

Another platform states loud and clear: We reserve the right, at any time and without prior notice, to remove or disable access to content at our discretion for any reason or no reason. Some of the reasons we may remove or disable access to content may include finding the content objectionable, in violation of these Terms or our Community Policy, or otherwise harmful to the Services or our users.

Brands picking right influencers

With the above in mind, brands should be sure to protect themselves before engaging with particular influencers. They should always be sure to do their research into an influencer's behaviour, and much like in traditional advertising, the personal backgrounds and reputations of influencers should be scrutinised prior to any brand spending on advertising campaigns. This will mitigate against the risk of the influencer's account being shut down, or having particular content removed.

Diversification

One of the best ways for both brands and influencers to protect themselves is to diversify. Influencers should look to diversifying the platforms they market on and the brands they work with. Brands should ensure they diversify the influencers they work with. This way, if any one individual or particular content causes a social media platform to press 'delete', the influencer or brand has other options to rely on for product sales.

Conclusion

The consequences of failing to observe a platform's terms of use or the UAE local laws could lead to financial penalties or even prison time. Further, consequences of an influencer or brand's failure to diversify could range from unmet expectation or revenue to the potential loss of an entire revenue stream. On that basis, it is very important for both influencers and brands to ensure mitigation and diversification, by observing all applicable laws and terms of use.

For more information on how we can help, please contact [Martin Hayward](#), [Charlotte Sutcliffe](#) or [Omar Khodier](#).