

Influencers & Sponsors: What you didn't know you need to know

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Reflecting the global trend, there is a lot of buzz around influencers in the UAE right now. Many regional and international influencers are rapidly achieving a significant presence and following within the UAE. Whether it is food, fashion, lifestyle, makeup, or any other consumer product, the UAE public is increasingly plugging into social media to stay on top of 'what's hot'.

With the announcement late last year that Dubai will be launching a new club for social media influencers, and with some local influencers now reportedly earning up to USD 5,000 per post, social media influencers are transforming the branding, advertising, and content creation industry in the UAE and across the globe. Businesses have realised the great potential that influencers have to generate brand awareness and popularity, and are increasingly moving to include influencers within their marketing budgets.

As the influencer movement has happened so quickly, there is no unified global approach in regards to the specific legal nuances of being an influencer or a sponsor in this context. However, it is clear that failing to address the relevant legal considerations can have detrimental impacts for both influencers and sponsors seeking their services, both in terms of brand management and growth.

Set-up

Influencers, whether they know it or not, are actually running a business. That means that, according to the laws of the UAE, they would require a trade licence. In general terms, a supplier should not be invoicing for any services in the UAE without an appropriate trade licence. If an influencer is charging 'per instagram post', for example, they will need to enter into a contract and then invoice for their services. This should be done through a UAE licensed company, as opposed to in a personal capacity. Whilst this might seem problematic for the influencer, it should be noted that this also assists influencers in managing their own legal liability and, if needed, take court action against a sponsor if they are not paid.

While this may not have been strictly enforced up until now, it is likely that, as the use of influencers grows and becomes more prominent, it will become increasingly important for an influencer to have the appropriate corporate structure in place. In addition, any sponsor that is securing the services of an influencer needs to be sure that they are able to enter into an enforceable contractual relationship with the influencer.

'Scope' it Out

It has been common for sponsors to have a very informal arrangement with influencers in this region. However, this is not in line with international best practice. Internationally, sponsors not only have contractual relationships with their influencers, but also enforce stringent terms of behaviour that apply to the material that is created by the influencer.

When entering into such agreements, it is very important that influencers and sponsors define the scope of work very clearly. Having unclear terms will inevitably lead to disagreement between the parties regarding their disparate expectations. This may not only result in the influencer's obligations being stretched far beyond what they understood to be required but can lead to a breakdown in the relationship. Leaving

terms, such as the number of posts, as undefined or 'to be agreed' is certainly a pathway to such a result. These terms, such as USD\$1,000 for 1 post per month for three months, should be set out clearly and in writing.

Some key questions to consider when finalising the contract are:

- What content is to be included?
- What is the term of the agreement – how many posts, what frequency, and in what time period?
- Who gets to choose the style/vibe of the post, i.e. who has the creative control?
- Will any posts make it clear that they are sponsored, such as using #sponsored or #ad ?
- What hashtags are required?
- What analytics are to be provided to each party?
- Are there to be any approval processes involved prior to posting?

Disclose

One of the key differences with a sponsor using an influencer to promote a product, instead of a more traditional form of paid advertising, is that the audience does not necessarily know whether an influencer is expressing a genuine opinion or if it is a sponsored post. This point has been the subject of much discussion on a global scale. Different countries have put in place laws and policies to regulate this matter. In the USA, there have been some high profile cases in which the Federal Trade Commission ('FTC') has emphasised the requirement for companies to be transparent about what are sponsored posts versus organic posts. In such a case, when a business has sponsored or paid an influencer to create certain content or endorse a product, this needs to be clear to consumers. Failure to do so has been deemed as deceptive marketing conduct. The FTC has also released a policy for the way in which an influencer relationship should operate, which is very prescriptive.

While the UAE does not currently have express laws in place concerning this matter, we note that Federal National Media Council Resolution 35 of 2012, the National Media Council ('NMC') Resolution on Advertising Standards, does include the following:

'The advertising identity shall be clearly determined, and it shall appear as unique and separate from other editorial or media material, and there shall be limits separating the advertisement from any other material in addition to time lapses in case of radio or television broadcasting.'

This law is not ambiguous in its requirement that editorial content be separated from advertising content. However, it is not clear whether the NMC would consider the insertion of, for example, one unidentified advertisement into a feed of editorial content as being an infringement of this regulation. It may still be considered to be 'unique and separated', notwithstanding that it is not marked as advertising. However, even if it is considered to be unique and separate, it is likely that the advertiser will not be 'clearly determined'.

As we have not yet seen the NMC apply this law to an influencer, and because we do believe that there is scope within this law for it to be applied if they chose to do so, we strongly recommend that both the sponsor and influencer consider this aspect before they enter into their contract.

Even without the discussion about this law, there has still been much debate about increasing the transparency of the influencers' position as a paid representative, and whether express disclosure should be required. For now, it would be extremely wise to ensure that, whatever the parties agree in regard to this point, i.e. whether the influencer must use '#sponsored', '#ad' or a similar hashtag in their posts, it should be clearly included in the contract between the sponsor and the influencer.

Protect your brand

For influencers, protecting their brand is always a key consideration in any transaction, as it can be easy to lose the public's interest or trust. However, with the dynamics of the brand/influencer relationship, the influencer certainly will feel that giving up too much control to a sponsor over the content creation would result in loss of popularity, as usually it's the individual's own creative edge that makes the individuals popular, and therefore an influencer, in the first place. Consequently, the influencer is likely to desire to protect their own brand.

For the companies using influencers, however, brand protection will be equally relevant. Using an influencer as the face of a brand can be risky business, as we saw with the recent dropping of YouTube star PewDiePie by Disney-owned Maker Studios as a result of a Wall Street Journal investigation into offensive themes in his Youtube channel. As a brand owner, it is always vitally important to ensure that there is a provision to exit a contract with an influencer who fails to live up to the required standards or if the influencer ceases to remain influential.

If you require assistance with your corporate set-up, negotiating or entering into a contract with an influencer, sponsor, or agency, or want to know how to protect your brand, please get in touch with us.

The Technology, Media & Telecommunications team at Al Tamimi regularly advises companies on their advertising and marketing practices in the region. Contact Fiona Robertson (f.robertson@tamimi.com) or Amna Qureshi (a.queshi@tamimi.com) for details.