



Key Takeaways:

- Disclosure of a payment or other material connection (e.g., via #Ad) must be prominent and "before the fold" for social media posts.
- Influencers must include applicable disclosures in video content (not merely in the caption that accompanies the video).
- A brand cannot repost influencer content without disclosing that the content has been paid for.

- Investors must disclose their material connections to brands in social media posts (and cannot directly contradict such disclosure with a statement that the post is "not an ad").

Haleon plc recently challenged Ginger Health Company (Wonderbelly) at the National Advertising Division (NAD) about influencer-related disclosure obligations in social media posts. In its complaint, Haleon alleged that its competitor, the maker of Wonderbelly Antacids, and its endorsers did not adequately disclose their material connections in their posts (the Federal Trade Commission (FTC)) considers providing payment and free products/services to influencers, along with employment and contractor relationships and other close connections between influencers and brands, as "material connections" that typically require disclosure). Influencers posted Wonderbelly-sponsored content on Instagram (a) with disclosure buried among other hashtags and only viewable after a user clicked the "more" link and (b) without verbal disclosure in the posted videos. Wonderbelly also reposted its influencers' content without clearly and conspicuously disclosing that the posts were from paid endorsers. Further, actress Demi Moore, an investor in Wonderbelly, made several posts about the company in which she did not disclose her affiliation with the brand. In some posts, Moore's statements included "not an ad," in contradiction of the FTC's disclosure requirements under the Endorsement Guides. In its decision, the NAD described the disclosures of Wonderbelly, its influencers, and Demi Moore as inadequate and recommended improving the disclosures to make the material connections more apparent to consumers.

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