

# Influencer Marketing

## Rules of Engagement

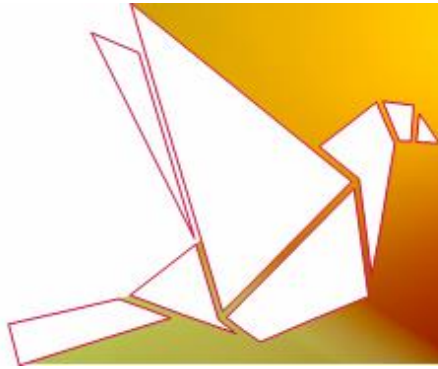
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### Background: what is influencer marketing?

- Influencer marketing is a form of marketing where the **focus is placed on specific key individuals rather than the target market as a whole**. It identifies the individuals that have influence over potential consumers, and orientates marketing activities around these influencers.
- Key examples of influencer marketing include the **use of endorsements, testimonials, online reviews and brand mentions by reliable influencers**, usually through social media, for brand promotion.
- **The rise of social media and the massive shift towards native ads and sponsored content has triggered the increasing adoption of influencer marketing**, given that this opens up a new channel for brands to engage with consumers more directly and organically, and at scale. By creating branded content with social media influencers, brands can amplify their message while also engaging with their target audience.

### How does it affect me?

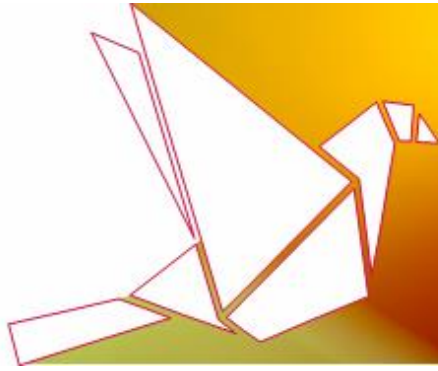
- Online reviews and endorsement is a growing tool used by consumers and business when buying and selling products and services, as they play a key factor in consumers' decision-making.
- Whether you are a **brand owner, ad agency, an online platform that aggregates consumer reviews or an influencer or endorser** (including bloggers, vloggers, tweeters and others), you **should ensure your compliance with the applicable regulatory and compliance rules**.
- **Every player involved in the digital marketing campaign, whether with respect to the brand or the endorser, can be held accountable for non-compliance with these rules.**



## The regulatory and compliance challenges of influencer marketing

- Influencer marketing is challenged with a growing tide of compliance and regulatory scrutiny led by regulators across the world, as well as the leading internet platforms (such as Google and Facebook). Key recent examples include:

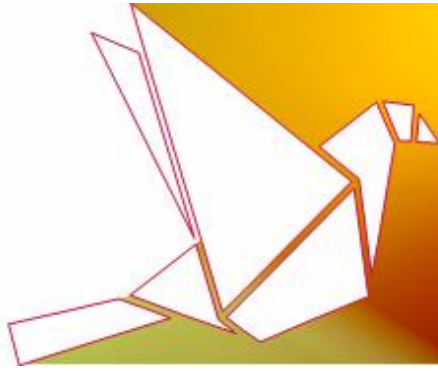
<p><b>November 2016</b></p>	<p><b>Facebook new Branded Content policy</b></p>	
<p>Facebook imposing new rules for sponsored content, including verification and disclosure</p>		
<p><b>October</b></p>	<p><b>Canada's sweep on endorsements</b></p>	
<p>Canadian regulator imposed a \$1.25 million penalty on Bell Canada in connection with its employees posting misleading reviews and ratings of the company's mobile applications on app stores</p>		
<p><b>August</b></p>	<p><b>FTC clarifies: #sponsored doesn't cut it</b></p>	
<p>The FTC announced that brands and the social media influencers who promote products need to be more transparent about sponsored content, clarifying that hashtags like #ad, #sp, #sponsored –are not always enough</p>		
<p><b>July</b></p>	<p><b>FTC settles charges against Warner for paying online influencers</b></p>	
<p>The FTC settled charges against Warner Bros. for failing to adequately disclose it paid online influencers, such as PewDiePie, to post positive gameplay videos</p>		
<p><b>June</b></p>	<p><b>Global Regulators unveil Online Reviews and Endorsements Guidelines</b></p>	
<p>The ICPEN, a global network of regulatory enforcement authorities, published its Online Reviews and Endorsements Guidelines for marketing professionals, digital influencers and review administrator</p>		
<p><b>Amazon suing fake reviewers</b></p>		
<p>Amazon brings lawsuits against thousands of vendors and operators for promoting fake or paid-for reviews on Amazon platform</p>		
<p><b>FTC enforcements actions</b></p>		
<p>The FTC took action against Lord &amp; Taylor for paying fashion influencers to create posts about dresses on Instagram, without disclosure</p>		
<p>FTC settled charges against Machinima, Inc. for failing to disclose when it has compensated influencers to post YouTube videos endorsing Microsoft's games</p>		
<p><b>March</b></p>	<p><b>Google Webmaster Bloggers' Disclosure Guidelines</b></p>	
<p>Google published best practices for bloggers who receive free products</p>		
		
<p><b>2015</b></p>	<p><b>FTC publishes its Endorsement Guidelines</b></p>	
<p>The FTC published its Endorsement Guides: What People Are Asking, setting forth guidelines for the use of endorsement and online reviews, with emphasis on the use of social media</p>		



## Practical guidelines

- Anyone involved in promoting products should **disclose any material connections**, particularly a commercial relationship, or paid-for or incentivized endorsements, in the sponsored content.
- Ensure and require **sponsored content to be labeled clearly and prominently**.
- Ensure that the **reviews reflect an actual and genuine experience or opinion** of the endorser, and avoid making claims that you cannot commit to.
- **Give clear guidelines and instructions** to intermediaries, advertisers and publishers alike (e.g. bloggers, reviewers or other influencers), and **monitor your partners' behavior**.
- **Ensure that internal processes** (such as internal policies, staff training materials and related materials) **reflect the regulatory and compliance requirements**.
- If your platform aggregates reviews, then you should **maintain procedures and implement steps** for identification, moderation and removal of fraudulent reviews, as well as to ensure fairness in the use of ratings or other evaluation scales, and verify consumer reviews as being authentic, and act on trader complaints regarding reviews.
- The impact of online endorsement and reviews is increasing with the rise of native advertising, which is subject to increasing regulatory oversight and global enforcement actions. Accordingly, it is important to ensure that you **comply with the requirements that apply to serving native ads** (ask us for our **HFN practical guideline about native ads**).
- **Ensure that you are up-to-date with the recent regulatory and compliance requirements that apply to endorsements**, online reviews and other forms of influencer marketing, both on a regulatory scale as well as on the social media you are using (e.g. Facebook).





## HFN TECHNOLOGY & REGULATION DEPARTMENT

HFN's Technology & Regulation team is a recognized market leader in its field. The team is led by domain experts who possess vital regulatory skills and advise startups, multi-national companies, mobile apps and software developers, internet vendors and disruptive technologies, as well as the entire array of the ad supply chain, on various compliance, regulatory and commercial matters concerning technology regulations and compliance, content, app-compliance, e-Commerce, monetization, adtech, media and online data protection.

The team has a thorough knowledge and diverse experience of the increasing volume of regulations, enforcement actions and legislative trends in a myriad of jurisdictions, including with respect to heavily "regulated" platforms such as mobile marketplaces, browsers and other platforms, as well as with industry best practices and leading self-regulatory guidelines. This enables the team members to offer unique and practical solutions for often complex situations and to assist in the development, implementation and management of adequate procedures, thereby mitigating legal and business risks.

### OUR TEAM LEADERS

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Nimrod co-heads HFN's Technology & Regulation department and is an expert investor in Cyber Security and a teaching professor on Internet and Cyber Law, Information technology and innovation. Nimrod received his doctor degree in law (J.S.D) from Yale Law School and conducted his Post-Doctorial research in computer science on proactive security at the Yale School of Computer Sciences. Nimrod is also a Partner at JVP, a leading Israeli VC, focusing on Cyber Security and Big Data, and has formerly founded innovative start-ups.

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Ariel co-heads HFN's Technology & Regulation department and is highly regarded for his global experience in advising multinational companies on diversity of compliance, regulatory and commercial matters concerning technology regulations, including content, app-compliance, e-Commerce, monetization, adtech, media, privacy and online data protection and cybersecurity.

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Ido is a member of the HFN's Technology & Regulation department, and specializes in advising Israeli and international clients, startups and internet companies, on a wide range of regulatory and commercial matters involving data protection and privacy, online advertising, user generated content, social media and mobile marketplaces compliance, e-commerce and international trade.

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Ruly joined HFN's Technology & Regulation department after 8 years as a legal advisor in one of Israel's largest banks. Ruly specializes in advising on data protection and privacy, online advertising, user generated content, social media and mobile marketplaces compliance, as well as financial and banking regulations, and their implications on financial institutions' information and technological procedures.